

ALAGAPPA UNIVERSITY



(Reaccredited with 'A' Grade by NAAC)
Karaikudi - 630 003, TAMILNADU

DIRECTORATE OF DISTANCE EDUCATION

(Recognized by Distance Education Council (DEC), New Delhi)

M.B.A
(Corporate Secretaryship)



Paper - ~~4.2~~ 4.4

Economic Legislations

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REFERENCE BOOKS;

1.Gushan & Kapoor, Economic and Other Legislations.
2.Taxmann Publication, Corporate Laws.
3.ICSI Study Material on Economic Laws.
4.Bare Acts.

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UNIT – I

INDUSTRIES (DEVELOPMENT AND REGULATION) ACT,1951

Learning objectives :-

1.To know the Industrial Policy Resolutions (IPRs) of the Govt. of India
2.To be familiar with the provisions of the Industries (Development and Regulations) Act,1951
3.To know the situations where industrial licence is necessary
4.To know the powers of the Central Govt. on investigation and take-over of industries and
5.To understand the policies and supports of the Central Govt. to Small Scale Industries

Economic development can be accelerated through the increasing contribution by the Industrial sector. India is also committed to the development of the industries. There was a need for a clear cut Industrial Policy of the Govt. immediately since Independence.

This was necessary to understand the Govt.'s commitment to industries, the role of the private sector, public sector, co-operative sector and joint sector. The Govt. Of India announced its First Industrial Policy Resolution on 6th April 1948. Subsequently, the Industrial Policy Resolutions were announced in the years 1956,1977,1980 and in 1991.

The term Industrial policy refers to the Govt.'s policy towards industries- in their establishment, growth, management, control etc., It is an important document expressing the relation between the Govt. and business. It also spells out the Govt.'s policy towards foreign capital, labour relations etc.,
Following are the objectives of an Industrial Policy :-

1. To correct the imbalances affecting development of industries and help to bring a balanced regional development

2. To direct the flow of capital according to the national priorities and to select suitable industries
3. To prevent the wasteful use of scarce resources like capital, ores, materials, labour etc., and to ensure their conservation and best utilization
4. To empower the Govt. to regulate the establishment and expansion of private sector
5. To identify areas for public, private and joint sectors in the industrial development and
6. To spell the Govt.'s stand in inviting foreign collaboration, foreign technology and foreign direct investment .

In the first Industrial Policy Resolution announced in 1948, the Govt. assured a greater role for Govt. in promoting industries in India. It classified industries into four types-

i) Industries in which the Govt. have a monopoly—Arms and ammunition, Atomic Energy and the Railways
ii) Industries in which only Govt. would start new industries. However, the existing industries in private sector, would be allowed to continue-coal, Iron and /steel, ship-building ,telephone, telegraph etc.,
iii) Industries which are subject to Govt. regulation and control-Automobiles, heavy chemicals, fertilizers, sugar, cement ,etc.,
iv) All the other industries not included in the above, would be left to the Private sector.

The 1948 IPR underlined the importance of small scale industries also.

On 30th April,1956, the Central Govt. announced the revised Industrial Policy Resolution.

Objectives of the IPR of 1956:-

1. To accelerate the rate of economic growth by speeding up industrialization
2. To increase the role of public sector in industrial development
3. To prevent concentration of economic power and the growth of monopolies
4. To achieve balanced regional development and
5. To promote small scale and cottage industries

Under the Industrial Policy Resolution 1956, industries were classified into three categories. -

i) The first category-schedule A with 17 industries-the development of which was the responsibility of the Govt.
ii) The second category-schedule B with 12 industries- the development of new units would be the responsibility of central Govt. but at the same time, private enterprise would also be permitted to supplement the efforts of the govt.
iii) The third category was to include all the remaining industries and their future development was left to the private sector.

In 1977, when the Janatha Govt. came to power, it announced an Industrial Policy Statement , with the objective of promoting small scale and cottage industries.

In 1980, there was a change in the Govt. policy and a new IPR was announced. This was similar to the IPR1956.

In 1991, The Govt. had made a shift from its commitment to the development of industries and announced an Industrial Policy. This policy underlined the concept of Liberalisation, Privatisation and Globalisation (LPG).

The Govt. introduced economic liberalization and a new IPR was made on 24th July 1991 with the following new ideas—Abolition of licensing to many industries, disinvestments by the Govt., increasing role to private sector, foreign direct investment in many industries with a maximum of 74 % equity participation, relaxing the concept of dominant undertakings, substantial expansion , Permission for Foreign Technology Agreements, etc., The same policies are also followed even now.

INDUSTRIES (DEVELOPMENT AND REGULATION) ACT,1951

After the IPR 1948, the Central Govt. assumed more importance in starting new industries and wanted to regulate the development of private sector. The capital available in the country was very scarce and the Controller of Capital

Issues was nominated to regulate the capital raised from the public to priority industries. Industrial Licensing was also introduced then.

The Govt. passed the Industries (Development and Regulation) Act in 1951 and it came into force from 8th May, 1952.

THE OBJECTIVES OF THIS ACT WERE:-

1. To implement the IPR 1948
2. To regulate and develop important industries
3. To introduce Industrial Licensing system to regulate the future development of specific industries listed in Schedule I of this Act
4. To protect the small scale industries and
5. To constitute Development councils and Central Advisory councils

IMPORTANT DEFINITIONS UNDER INDUSTRIES (DEV. & REG)ACT:-

a. Industrial Undertaking : Section 3(d) defines 'industrial undertaking' to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority, including the Government. Thus, an undertaking engaged in the manufacture or production of any article mentioned in the First Schedule of the Act shall be called an industrial undertaking for the purpose of IDRA, 1951.
b. Existing Industrial Undertaking : Section 3(bb) of IDRA, 1951 defines the term 'existing industrial undertaking' which includes:-

1. In the case of an undertaking pertaining to any of the industries specified in the First Schedule as originally enacted – an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before the commencement of the Act.

2. In the case of an industrial undertaking pertaining to the First Schedule by an amendment thereof – an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment.

c. Current Liabilities. : According to Section 3(ae) of the IDRA, 1951, 'current liabilities' means liabilities which must be met on demand or within a period of 12 months from the date they are incurred and includes any current liability which is suspended under Section 18-FB pursuant to the taking over of the control and management of an industrial undertaking by the Central Government under the provision of the Act.

d. New Article : Section 3(dd) of the IDRA, 1951 defines the term 'New Article' and states that new article in relation to an industrial undertaking which is registered or in respect of which a licence or permission has been issued under this Act,

i. any article which falls under the articles ordinarily manufactured or produced in the item under which falls the articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission, as the case may be;

ii. any article which bears a mark as defied in the Trade Marks Act, 1940 or which is subject of a patent if at the date of registration or issue of licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject-matter of the patent.

e. Current Assets: Section 3(ab) defines the expression 'current assets' to mean bank balances and cash and includes such other assets or reserves as are expected to be realized in cash or sold or consumed within a period of not more than 12 months in the ordinary course of business, such as stock-in-trade, amounts due from sundry debtors for sale of goods and for services rendered, advance tax payments and bills receivable, but does not include sums credited to a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by a company owning an industrial undertaking.

f. Scheduled Industry:-

Section 3(i) defines the term Scheduled industry to include any of the industries specified in the First Schedule to the Act.

CENTRAL ADVISORY COUNCIL:-

Under Sec.5 of the Act, the Central Govt. is empowered to establish a Central Advisory Council for advising the central Govt. on matters concerning the development and regulation of scheduled industries. The composition of the council is, one chairman and other members not exceeding 30, representing the owners / employees/ consumers of scheduled industries. The chairman and other members are to be nominated by the Central Govt.

DEVELOPMENT COUNCILS:-

Under Sec.6 of the Act, the Central Govt. is empowered to establish Development councils for every scheduled industry or a group of scheduled industries. The central Govt. may assign to a Development council, any of the following functions, as specified in the second schedule of the Act, to increase the efficiency or productivity of that industry.

FUNCTIONS OF THE DEVELOPMENT COUNCIL:-

i. Recommending targets for production, coordinating production programmes and reviewing progress from time to time.
ii. Suggesting norms of efficiency with a view to eliminate waste, obtaining maximum production, improving quality and reducing costs.
iii. Recommending measures for securing fuller utilization of installed capacity and for improving the working of the industry, particularly of the less efficient units.
iv. Promoting arrangements for better marketing and helping in the devising of a system of distribution and sale of the produce of the industry which would be satisfactory to the consumer.
v. Promoting standardization of products.
vi. Assisting in the distribution of controlled materials and promoting arrangements for the industry.

vii. Promoting or undertaking inquiry as to materials and equipment and as to methods of production, management and labour utilization, including the discovery and development of new materials, equipment and methods and of improvement in those already in use, the assessment of the advantages of different alternatives and the conduct of experimental establishments and of tests on a commercial scale.

viii. Promoting the training of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto.

ix. Promoting the retraining in alternative occupations of personnel engaged in or retrenched from the industry.

x. Promoting or undertaking scientific industrial research, research into matters affecting industrial psychology and research into matters affecting industrial psychology and research into matters relating to production and to the consumption or use of goods and services supplied by the industry.

xi. Promoting improvements and standardization of accounting and costing methods and practices.

xii. Promoting or undertaking the collection and formulation of statistics.

xiii. Investigating possibilities of decentralizing stages and processes of production with a view to encouraging the growth of allied small scale and cottage industries.

xiv. Promoting the adoption of measures for increasing the productivity of labour, including measures for securing safer and better working conditions and provisions and improvement of amenities and incentives for workers.

xv. Advising on any matter relating to the industry (other than remuneration and conditions of employment) as to which the Development Councils are concerned in the exercise of any of their functions.

xvi. Undertaking arrangements for making available to the industry information obtained and for advising on matters with which the Development Councils are concerned in the exercise of any of their functions.

INDUSTRIAL LICENSING :-

The I (d & R) Act,1951 has introduced the concept of Industrial Licensing for the industries listed in the I schedule. But many industries which were originally in that list, have been exempted from licensing at present.

An Industrial Licence is a written permission from the Central Govt. to an industrial undertaking to manufacture the articles specified in that licence. The licence specifies the quantum of production and is valid for a specific period.

INDUSTRIAL LICENSING IS REQUIRED FOR THE FOLLOWING :-

I. LICENCE FOR NEW UNDERTAKINGS:-

Except the Central Govt. no person shall establish any new industrial undertaking covered under Schedule I without a licence from the Central Govt. The licence may specify certain conditions as to location, production capacity, size, validity period etc.,

INDUSTRIAL LICENSING IS COMPULSORY FOR THE FOLLOWING NEW INDUSTRIES :-

1.Distillation and Brewing of Alcoholic drinks
2.cigars /cigarette / tobacco and manufacturing of tobacco substitutes
3.Electronic aero space and defence equipments
4.Industrial explosives
5.Hazardous chemicals
6.Drugs and pharmaceuticals

II. LICENCE FOR PRODUCING OR MANUFACTURING NEW ARTICLES:-

The term 'new article' means any article produced new and which is not covered by the existing industrial licence.

The owner of an industrial undertaking shall not produce / manufacture any new article unless he gets a licence for the production of that article also from the Central Govt.

III. LICENSING OF EXISTING INDUSTRIAL UNDERTAKINGS:-

The I (D & R) Act came into force from 8th May, 1951. As on that date, many industries, covered in schedule I, were functioning. These industries were called as existing industrial undertakings . The central Govt. has been empowered to extend the provisions of this Act to any industry at any time and similarly empowered to exempt any industry from the provisions of this Act. In such a situation, if some industries are brought into the ambit of this Act from a particular date, then the existing industries must register with the Central Govt. within a prescribed time to get the licence. If the owners of such industries fail to register within that specified time, then they would be requested to apply for a licence to Govt. for 'carry on business' licence without registration.

IV. LICENCE FOR CARRYING ON BUSINESS AFTER THE REVOCATION OF CERTIFICATE OF REGISTRATION:-

Sometimes, the Central Govt. may revoke the certification of registration granted to a factory and the owner shall not carry on the business without a licence or permission from the govt.

V. LICENCE FOR CARRYING ON BUSINESS FOR INDUSTRIES COVERED SUBSEQUENTLY BY THE ACT:-

The Central Govt. has been empowered to bring any industry under the coverage of Industries (I & D)Act subsequently at any time. If any industry has been added to the list by the Govt. then the owners of such industries shall not carry on the business only with a licence. They should obtain the licence within three months from the date on which the industry comes under the coverage of this Act.

VI. LICENCE FOR CHANGE IN LOCATION:-

Normally, the licence shall provide conditions for the location of an industry. If the owner wants to change the location of the industry either wholly or in part , he should obtain the permission / licence from the central Govt.

VII. LICENCE FOR SUBSTANTIAL EXPANSION:-

The term substantial expansion means an industrial undertaking, which increases the production capacity as if it is a new industrial undertaking . But this term does not include normal expansion. Licence is required for substantial expansion. If the receiver of an industrial licence has failed to establish or fails to take effective steps to establish new industrial undertaking within the prescribed time or extended time, then the central Govt. has the power to revoke or amend the licence given.

EXEMPTION FROM INDUSTRIAL LICENSING :-

INDUSTRIAL LICENCE IS NOT REQUIRED IN THE FOLLOWING CASES.

1. Central Govt. may exempt any undertaking / scheduled industry / class of undertakings / scheduled industries from any or all of the provisions of this Act.
2. Industrial undertakings operating under 100 % Export Oriented Units (EOU schemes) / Special Economic Zones (SEZ) / Export promotion Zones (EPZ) / industries producing items reserved for small scale industries are exempted from industrial licensing.
3. Central Govt. may withdraw any exemption granted to any industry. In such cases, such industrial undertakings should obtain licence within the specified period.

After 1991, the Central Govt. has relaxed the industrial policy requirements because of its Liberalisation policy. To facilitate foreign direct investment / foreign collaboration /access to foreign technology / many restrictions on licensing have been removed .

All industries except those mentioned in Annexure I / II are exempted from industrial licensing . In July 1991, the Central Govt. has abolished the First Schedule.

INDUSTRIAL ENTREPRENEUR MEMORANDUM:-

Industrial undertakings, which have been exempted from compulsory licensing, are required to file a declaration called Industrial Entrepreneurial Memorandum with the Central Govt.

LOCATION OF INDUSTRIES:-

Normally, the industries can be located anywhere in India. But, there are certain industries , identified as highly polluting in nature. Such industries are required to be located at least 25 kilometers away from the specific cities with a population of 1 million people as per 1991 census.

SMALL SCALE INDUSTRIES:-

Industries, which have an investment in plant and machinery, not exceeding Rs. 1 Crore are identified as small scale industries. They are free to manufacture any item reserved for this sector. They are to register with the Directorate of Industries and Commerce of the state concerned . They also do not have any restrictions with regard to location. They are also encouraged to have a maximum of 24 % equity participation from a local / foreign industrial undertaking.

ENVIRONMENTAL CLEARANCES:-

The Environment (Protection) Act,1986, lists nearly 30 projects in respect of which, the occupier has to obtain environmental clearances from the Ministry of Environment. But SSIs are exempt from this provision.

POWERS OF CENTRAL GOVT. ON INVESTIGATION INTO SCHEDULED INDUSTRIES / INDUSTRIAL UNDERTAKINGS ;-

Under Sec.15 of the Act, the Central Govt. has been empowered to make an investigation into the affairs of any scheduled industries / industrial undertakings. It can order for investigation in the following circumstances :-

When it is of the opinion that :- (i) there has been or likely to be a substantial fall in the volume of production, for which there is no justification (ii) fall in the quality of articles which can be avoided

(iii)rise in the prices for which there is no justification,
then the Central Govt. has to take steps for conservation of resources of national importance, if the industrial undertaking is managed in a manner highly detrimental to the scheduled industry or public interest.

INVESTIGATION INTO THE AFFAIRS OF A COMPANY IN LIQUIDATION- SEC. 15 A-

Central Govt. has been empowered to investigate the affairs of a company, even if it is under liquidation, in the following situations –
1.When it is necessary in the interest of the general public and in the interest of production, supply and distribution of that particular industry
2.When the company is being wound up or under the supervision of a High court
3.When the business of such company is not being continued
4.To investigate the possibility of restoring or running the industrial undertaking.

The Central Govt. will make an application to the High court . But there were divergent views presented by the High courts as to when the application should be given .

In the case between Union of India Vs. Anglo-French Textiles Limited, the Madras High court held that the central Govt. can make an appeal even if the winding up of the company is pending in the court.

But in the case, Union of India Vs. Shalimar works Ltd. , the Calcatta High court held that the proper stage for giving application under Sec.15A is when the order for the winding up has been made by the court but not before.

DIRECTIONS AFTER INVESTIGATION BY THE CENTRAL GOVT. UNDER SEC.16:-

After investigation under Sec.15 of the Act, the central Govt. may issue directions for the following :-

1. Regulating the production of any article and fix standards of production.
2. To take up steps to stimulate the development of industry to which the undertaking relates to
3. Prohibit the industrial undertaking from restoring any act / practice which might reduce the production capacity or economic value
4. Controlling the prices / regulating the distribution of any article / class of articles

TAKE-OVER OF INDUSTRIAL UNDERTAKINGS AFTER INVESTIGATION –NOTIFICATION OF ORDER:-

To make any investigation under Sec. 15 or under Sec.15 A, the Central Govt. may appoint any person or body of persons and may seek the help / advice / expertise any person to assist in the investigation. They shall have all the similar powers similar to that of a civil court ,as under the Code of Civil Procedure 1908.

Under Sec.18A, Central Govt. may take over the management of an industrial undertaking after investigation. Sec.18AA empowers the Central Govt. to take over any industrial undertaking without investigation, under certain special circumstances.

After investigation under Sec.15 or 15A, the Central Govt. may notify the take over of the management of specified industrial undertaking in the following circumstances :-

When the Central Govt. is of the opinion that (i)the industrial undertaking fails to comply with the directions given under Sec.16

(ii)that the industrial undertaking is being managed in a manner highly detrimental to a scheduled industry / public interest,
then, the Central Govt. authorise any person or body of persons to take over the management of the whole / part of the undertaking for a period of 5 years initially. This may be extended for every 2 years and the maximum period should not go beyond 12 years.

EFFECTS OF NOTIFIED ORDER :-

When a notification order has been given under Sec.18A, it shall have the following effects.

1.All persons in charge of the management- Directors / Manager etc., shall be deemed to have vacated the office

2.Any contract between the company and directors shall be terminated

3.The person /body of persons appointed under Sec.18A shall be the competent authority for running the industrial undertaking.

TAKE-OVER BY THE CENTRAL GOVT. WITHOUT INVESTIGATION(SEC.18AA)

Under Sec.18AA, the Central Govt. has been empowered to take over any industrial undertaking without investigation in the following situations.

When it is of the opinion that :-

(i)the persons in charge have by reckless investment or creation of encumbrances on the assets of the undertaking or by diversion of funds, have brought a situation which is likely to affect production and immediate step is necessary to prevent such a situation or

(ii)It has been closed for a period of not less than3 months and such closure is prejudicial to the scheduled industry and if it is possible to restart the undertaking and such restarting is necessary in the interest of the public.

Then, the Central Govt. may appoint a person or body of persons to takeover the management of such undertaking for an initial period of 5 years and it may be extended by a period of 2 years. The maximum period cannot exceed 12 years.

COMPARISON BETWEEN SEC.18A AND SEC.18AA:-

Both under Sections 18A and 18AA, the central Govt. has been empowered to take over any undertaking. A comparison between these two sections reveals the following :-

1.Takeover is possible under Sec.18A only after investigation, But takeover under Sec.18AA can be ordered even without investigation.

2.Takeover under Sec.18A is the result of the investigation under Sec.15 and when the Central Govt. is of the opinion that the particular industry is

functioning in a manner which is highly detrimental to the interests of the scheduled industry or to the public interest. But under Sec.18AA, action can be taken if the central Govt. is satisfied with regard to the twin conditions referred to above.

NEED FOR NOTICE BEFORE PASSING AN ORDER UNDER SEC.18AA:-

Whether a notice should be served to an industrial undertaking, before passing an order under Sec.18AA is a controversial question. In Swedeshi Cotton Mills Vs. Union of India, the Supreme Court observed that an opportunity should be given to the undertaking concerned, to explain its side as a cause of natural justice .

PENALTIES :-

Any person who makes a failure or contravention of the following, shall be imprisoned for 6 months or levied a fine of Rs.5,000 or both. If the case of continued contravention , a penalty of Rs.100 is payable for every day of default.

1. Failure to register an existing industrial undertaking.
2. Failure to produce the certificate of registration.
3. failure to obtain an industrial licence for setting up a new industrial undertaking or to produce a new article.
4. Failure to obtain carry on business licence , permission for change of location, substantial expansion
5. Failure to adhere to the directions issued under Sec.16
6. Submission of a false statement

SMALL SCALE INDUSTRY:-(SSI)

SSI sector covers a wide range of industries –(i)SSI undertakings (ii)Ancillary Industrial Undertakings (iii)Export Oriented Units (iv)Tiny enterprises (v)SS service Enterprises (vi)SSS business enterprises (vii)Artisans, village and cottage industries and (viii)Women Entrepreneurs' Enterprises.

The definition for the term small scale industry has been revised many times over the past decades. According to Govt. of India Notification in 1999, a

SSI is one in which the investment in fixed assets in plant and machinery does not exceed Rs.1 crore.

This limit was previously Rs.35 lakhs, then increased to Rs.60 lakhs ,then to Rs.3 crores and now revised to Rs.1 crore.

For ancillary industrial undertakings also, the investment limit is Rs.1 Crore. In the case of tiny enterprises, it is Rs. 25 lakhs.

SSI occupies an important place in the industrial economy of any country. The SS industries are specially important in the context of employment generation, equitable distribution of wealth, balanced regional development and promotes the art and craft.

They assist in entrepreneurship and skills development ensure better use of scarce financial resources and use of appropriate technology. They also help for the establishment of industries in rural areas and help to check the movement of rural population to cities. In a labour abundant country and capital scarce country like India, SSIs play a vital role.

In all the Industrial Policy Resolutions(IPRs), SSIs have been given adequate encouragement. For the first time in August 1991, the Central Govt. presented in the Parliament a new small enterprise policy called "Policy measures for promoting and strengthening and supplementing Small, Tiny and Village Enterprises". The main emphasis of this policy is to import more vitality and growth importance to these sectors to enable it to contribute to the economy – in terms of employment, output and exports.

They have been exempted from getting any industrial licence and have been given incentives and technical help. Certain industries and items of products were exclusively reserved for the production of SSIs only. The Govt. also assured the purchase of certain items only from the SSIs. In order to ensure the regular supply of some raw materials to SSIs, the Govt. has liberalized the import policy.

PROCEDURE FOR SETTING UP SSI:-

As a first step towards starting a SSI, the entrepreneur has to prepare a Project Report. A project report is a proposal involving detailed analysis of the cost of the investment, the products to be manufactured, the availability of raw materials, machineries, labourers, market etc., The project report can be prepared in consultation with some agencies like Small Industries Service Institute (SISI), District Industries Centre (DIC) and Technical Consultancy Organisations (TCOs) . The business to be started should be decided and the entrepreneur has to apply for the permission from the local authorities, pollution control board, sales tax authorities and other similar Govt. departments. He has to obtain the SSI Registration number. He has to decide the form of organization- whether it is a sole trader or partnership organization. He has to plan for the finance. He arranges for the capital by way of loan or by any other means . He can construct factory buildings and order for the machineries and raw materials . He can employ staff and start production. He can arrange for marketing of the finished products and earn profits. The profits can be ploughed back in the business and after some years, he can diversify the production and opt for modernization of his plant.

FISCAL AND OTHER SUPPORT SCHEMES FOR SSIs:-

Starting a SSI is not an easy task. The entrepreneur requires help in every step. He has to be supported right from choosing a business, that is, identification of a project, acquiring machineries, purchasing raw materials, employing staff, training of staff, arranging for necessary finance, producing the goods and marketing goods. The Central Govt. and concerned State Govts. have come forward to help the SSIs in all respects. They provide necessary infrastructure for the SSIs.

There are many institutions rendering assistance to the SSIs. The important among them are :-

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA (SIDBI):

SIDBI was set up as a subsidiary of the Industrial Development of Bank of India (IDBI), by a special Act in 1989 and the bank commenced its operations in April,1990. It acts as a principal financial institution for the promotion, development , and financing of industry in the small scale sector and for

coordinating the functions of institutions engaged in similar activities. Its activities include:-

1. Refinancing of loans and advances extended by primary lending institutions
2. Discounting and rediscounting of bills
3. Extension of seed capital and soft loan assistance
4. Granting direct assistance and refinance for financing exports of SSIs
5. Providing factoring and leasing services
6. Extending financial support to National Small Industries Corporation.

SIDBI mainly helps for technological up gradation and modernization of SSIs and providing marketing support of the products of SSIs.

Industrial Development Bank of India (IDBI), Industrial Finance Corporation of India (IFCI), Industrial Credit and Investment Corporation of India (ICICI),State Finance Corporations(SFCs), Industrial Reconstruction Bank of India (IRBI) and Commercial banks are some of the other financial institutions which help the SSIs to get the fixed capital and working capital. Commercial banks provide for working capital, venture capital finance, long term financial assistance and export credit . SSIs enjoy special priority status for getting loans from commercial banks.

TECHNICAL CONSULTANCY ORGANISATIONS :- (TCOs)

TCOs have been set up to provide consultancy services to entrepreneurs setting up small and medium scale units. The first TCO was established in Kerala State in 1972 and it has been setup almost in all states. Right from the stage of project identification and till the implementation and operation, TCOs help the entrepreneurs. Their activities include:_

(i)Conducting industrial potential surveys (ii)Preparation of profiles of various small projects and feasibility studies (iii)Evaluation of projects referred by the financial institutions (iv)Conduct Entrepreneurship Development Programmes (EDPs) (v)Providing technical and administrative assistance to small scale and

medium scale enterprises (vi)Assisting the entrepreneurs in the modernization and technical up gradation .
They help for the development of SSIs in the rural and backward areas.

INDUSTRIAL AND TECHNICAL CONSULTANCY ORGANISATION OF TAMILNADU(ITCOT):-

This is the TCO started by the Tamilnadu Govt. in1979. Its services include project report preparation, providing consultancy services, conducting pre-investment studies, making potential surveys and EDPs to the new and established entrepreneurs.

SMALL INDUSTRIES SERVICE INSTITUTE (SISI):-

SISIs have been set up in every state from 1956 to help the SSIs in that state. They render technical consultancy and advisory services –selection of profitable small scale units, choice of appropriate machinery, feasibility study of SSIs for every district considering the availability of local raw materials, adoption of recognized standards of testing, quality performance of SSIs products, etc., They provide common facility service, training and testing facilities. They also render assistance in the following areas:-project profiles, State Industrial potential survey, district industrial potential survey, modernization and in plant studies.

KHADI AND VILLAGE INDUSTRIES COMMISSION:- (KVIC)

It was established in 1953 with the primary objective of developing khadi and village industries and improving rural employment. During Janatha Govt.in 1977, this was given great importance. The activities of KVIC include –training of rural artisans, helping for the procurement of raw materials and marketing of finished products, providing tools, machineries at concessional rates, etc., KV Is require low capital, give employment to the rural masses, utilize the local resources and promote the arts and crafts of the rural folk.

DISTRICT INDUSTIRES CENTRES:-(DICs) These were started in May,1978 with a view to provide integrated administrative framework at the district level for the promotion of SSIs. DICs are helping entrepreneurs for getting single window clearances from various authorities. Each district has a DIC at its head quarters. It acts as a chief coordinator of various Govt. departments and other agencies. The organizational set up of DIC consists of

General Manager, four functional managers and three project managers to provide all help to SSIs. They implement all the schemes of the Central and State Govts. towards SSIs.

They conduct potential industrial surveys keeping in view of the locally available raw materials and other resources. They prepare techno-economic surveys and identify product lines and then to provide investment advice to the entrepreneurs.

They prepare an action plan to effectively implement the schemes identified. They provide advice in purchase of machinery, conduct artisan training programme, undertake product development work and appraise the worthiness of various investment proposals.

NATIONAL SMALL INDUSTRIES CORPORATION LTD :-(NSIC)

This was set up in 1955 to promote, aid and to foster the growth of SSIs in India. It provides a wide variety of services to SSIs. Some of the services are :- (i) Providing machinery on hire purchase scheme to SSIs.(ii)providing equipment leasing (iii)helping export marketing (iv)distributing raw materials to SSIs.(v)imparting training and (vi)helping technology up gradation .

SMALL INDUSTRIES DEVELOPMENT ORGANISATION :-(SIDO)

SIDO is an apex body and nodal agency for formulating, coordinating and monitoring the policies and programmes for promotion and development of SSIs. It maintains a close liaison with government, financial institutions and other agencies. The main functions of SIDO can be grouped into (i)coordination (ii)industrial development and (iii)extension.

SMALL SCALE INDSUTRIES BOARD(SSIB):-

This Board was constituted by Govt. of India in November 1954 to advice the Govt. on the programme and work of the different agencies looking after the development of SSIs in the country. It is an apex advisory body .It consists of nearly 50 members representing various fields.

STATE SMALL INDUSTRIES DEVELOPMENT CORPORATION :- (SSIDC)

These were set up by the concerned State Govts.. They cater to the primary development of small scale, tiny and village industries. They procure and supply raw materials, sell machinery on hire purchase system, provide marketing assistance and extend seed capital assistance .

OTHER INSTITUTIONS WHICH HELP FOR SSIs are :-

1. **NATIONAL INSTITUTE OF ENTREPRENEURSHIP AND SMALL BUSINESS DEVELOPMENT (NISEBUD), NEW DELHI**

2. **NATIONAL ISNTITUTE OF SMALL INDUSTRIES EXTENSION TRAINING (NISIET), HEDERABAD**

3. **CENTRAL ISNTITUTE OF TOOL DESIGN,HYDERABAD**

4. **INSTITUTE FOR DESIGN OF ELECTRICAL MEASURING INSTRUMENTS(IDEM), MUMBAI**

5. **DIRECTORATE OF INDUSTRIES OF THE STATE GOVTs.**

SPECIAL ECONOMIC ZONES (SEZs):-

This concept of SEZ has been borrowed from China. SEZ is a specially created area, having industries with an initiative of exporting all of its output . The units to be established in the SEZs have been exempted from industrial licensing, provided with so many incentives and subsidies. The existing Export Processing or Promotion Zones (EPZs) / Free Trade Zones (FTZs) have also been converted into SEZs. The units in the SEZs can import all types of goods, without the payment of duty. The Govt. of India has passed SEZs Act in 2005 and many State Govts. have allotted lands for the creation of SEZs.

EXPORT ORIENTED UNITS:(EOUs)-

A unit with an obligation to export at least 50% of its annual production by the end of third year of commencement of production and having investment in plant and machinery not more than RS.1 Crore can be called an EOU SSI unit.

They have been given special treatments by the Govt. in providing the subsidies and incentives. These units can be set up in SEZs / FTZs / EPZs /Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP).

Such units may be engaged in manufacturing ,service, repair, remaking, reconditioning, reengineering including making of gold / silver / platinum jewellery, agriculture, aquaculture , floriculture, horticulture, sericulture, animal husbandry etc.,

SETTING UP OF UNITS IN FTZ / 100% EOU:-

To promote industrial development, the Central Govt. has announced various schemes and incentives. Some specific industries are allowed to set up their units in the following zones without any licence .

1. Free Trade Zone (FTZ).
2. 100 % Export Oriented Units (EOU)
3. Export Processing Zones (EPZ)
4. Software Technology Park (STP)
5. Electronic Hardware Technology Park (EHTP)

Such units may import second hand capital goods without payment of duty, provided they are not prohibited goods. The unit shall be a net foreign exchange earner. The minimum export performance and items for the manufacture for export will be specified in the permission letter /letter of indent / letter of permission. If there is any failure to fulfill the commitment , a penalty shall be leviable. Such units are required to execute a legal undertaking with the Development Commissioner. He will make quick approval. The Development Commissioner shall approve setting up of units in EPZ / 100% EOU/STP /EHTP/ subject to the following conditions –(1) Item of manufacture does not require an industrial licence under the Industries (D & R) Act (2) Locational conditions are satisfied (3) Unit undertakes to achieve net foreign exchange earnings as a percentage on exports and export performance as stipulated in the policy (4)There is a foreign technology agreement .

DOMESTIC TARIFF AREA (DTA) SALES :-

Normally the entire productions of units in EOU /EPZ/ EHTP/ STP areas are to be exported . But the rejected goods of such units may be sold in the local / domestic areas after payment of duties . But it is prohibited in case of sale of car/ liquor and other items specified by the Director General Foreign Trade.
The byproducts specified in the letter of permission / letter of indent, may be sold in the Domestic Tariff Area, subject to payment of duties.

REVIEW QUESTIONS:-

1. What is an industrial policy? What are its objectives ? Explain briefly the different Industrial Policy Resolutions of the Govt. of India, announced since Independence.

2. Explain the objectives and important provisions of Industries (Development and Regulation) Act,1951.

3. Define the following terms with reference to the Industries (Dev.&Reg)Act,1951 (a)Industrial Undertaking (b)New Article (c)Scheduled Industry.

4. Discuss the functions of Development council.

5. Write notes on :Central Advisory Council

6. What is an Industrial Licence ? When it is necessary?

7. What are the undertakings which have been exempted from industrial licensing ?

8. What are the powers of the Central Govt. under Industries (Dev.& Reg)Act,1951 with regard to investigation and take over of industries?

9. What is a Small Scale Industry ? Explain the assistances provided by the Central Govt. for its growth and development .

10. Write notes on (i) SIDBI (ii)Special Economic Zones (iii)District Industries Centre (iv) Technical Consultancy Organisations

UNIT 2:

COMPETITION LAW

Learning objectives :-

1.To understand the important provisions of Competition Act,2002 and

2. To know the constitution, powers and functions Competition Commission of India

In India, Industrial licensing was introduced in 1951 after passing Industries (Development & Regulation) Act 1951. This has led to the concentration of economic power in the hands of a few. In 1964, the Central Govt. had appointed Monopolies Inquiry commission to find out the causes, nature and extent of concentration of economic power in the country and to suggest remedial measures for the same. Based on the report of the commission, the Monopolies and Restrictive Trade Practices (MRTP) Act was passed in 1969 and came in to force from 1.6.1970.

With the globalisation of world economy it has become necessary to encourage competition to foster speedy economic development in India. Many of provisions of MRTP Act, 1969 were deleted / substituted in the light of Liberalisation, Privatisation and Globalisation (LPG) policy of the Govt. of India.

The Central Govt. has enacted the new law called Competition Act 2002 repelling the MRTP Act 1969. The competition Act 2002 came into force from 13th Jan.2003.

The Act has 9 chapters spread over 65 sections.

Chapter I – Definitions

Chapter II – Anti competitive Agreements / abuse of dominance and Regulations of combinations.

Chapter III – Constitution of Competition Commission of India (CCI)

Chapter IV – Duties, Powers and functions of CCI

Chapter V – Duties of Director General

Chapter VI – Penalties and contraventions

Chapter VII – Competition Advocacy
Chapter VIII
And
Chapter IX - Finance, A/cs and Audit and miscellaneous.

OBJECTIVES OF THE ACT:-

i) To establish a commission to Prevent Practices having adverse effects on Competition
ii) To Promote and sustain competition in markets
iii) To protect the interests of consumers and
iv) To ensure freedom of trade carried on by other participants in markets of India.

Important Definitions :-

SEC. 2(A) Acquisition means directly or indirectly, acquiring or agreeing to acquire:-(i) the shares, voting rights or assets of any enterprise and
(ii)Control over management or control over assets of any enterprise.

2(b) Agreement:- It includes any arrangement or understanding or action in concert-(i)whether or not, such agreement, understanding or action is formal or in writing ; or (ii)whether or not such agreement, understanding or action is intended to be enforceable by any legal proceedings.

2(c) cartel:- Includes an association of producers, sellers, distributors, traders or service providers who, by Agreement among themselves, limit, control or attempt to control the production, distribution, sale or price of or trade in goods or provision of services.

2(e)Commission means Competition Commission of India:-

2(h) Enterprise:- Means a person or dept. of the Govt. who or which is, or has been engaged in any activity, relating to the production, storage, Supply, distribution, acquisition or Control of articles or goods or provision of services (or) (ii) in investment or dealing with shares / debentures or other securities of any other body corporate, or divisions or subsidiaries.

2(f) consumer:- Means any person who (i) buys any goods for considerations paid / to be paid/ or under deferred payment system (ii) hires or availing any service for a consideration paid or to be paid or under deferred payment system.

2((i)Goods means goods as defined in the Sale of goods Act,1930 and includes (a)products manufactured, processed or mined; (ii)debentures, stocks and shares after allotment (iii)in relation to goods supplied, distributed or controlled in India, or goods imported into India

2(U) service:- Means service of any description which is made available to potential users, including banking, communication, education, financing, insurance, electricity, Boarding, Lodging, entertainment, etc.,

2(v) Shares:- means shares in the capital of a company carrying voting rights and includes-(i) any security which entitles the holder to receive shares with voting rights (ii)stock except where a distinction between stock and share is expressed or implied.

Chapter II of the Act (Sections 3 to 6) deals with prohibition of certain agreements, abuse of dominant position and regulation of combinations.
Sec. 3 deals with anti – competitive agreements. According to Sec. 3, no enterprise or association of enterprise or person or association of persons shall enter in to any agreement in respect of production, supply, distribution, storage, acquisition or control of goods / services which causes or likely to cause an appreciable adverse effect on competition within India. Any such agreement entered into in contravention of the above provisions shall be void.

The term 'appreciable adverse effect on competition' means the effect of an agreement between enterprises which-

i) Directly or indirectly determines purchase (or) sale prices
ii) Limits or controls production, supply, market, technical development, investment or provision of services.
iii) Shares the market or sources of production /provisions services by way of allocation of geographical area of market, or type of goods or services or no. of customers in the market or any other similar way
iv) Directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

EXCEPTIONS:-

Any agreement entered into by way of joint ventures of such agreement that increases efficiency in production, supply, distribution storage acquisition or control of goods / services.

(i)Tie – in arrangement (ii) exclusive supply agreement iii) exclusive distribution agreement iv) refusal to deal v) Resale price maintenance shall be considered as anti – competitive agreements, and if such agreements caused or are likely to cause an appreciable adverse effect on competition in India.

i) Tie–in agreement includes any agreement requiring a purchaser of goods, as a condition of such purchase to purchase some other related goods.

ii) Exclusive supply agreement includes any agreement restricting in any manner the purchaser in the course of this trade from acquiring or otherwise dealing in any goods other than those of the seller or any other persons.

iii) Exclusive distribution agreement includes any agreement to limit or restrict or withhold output or supply of any goods or allocate any Area or market for the disposal or sale of goods.

iv) Refusal to deal:- Includes any agreement which restricts or is likely to restrict by any method the persons / classes of persons to whom goods are sold or from whom goods are bought.

v) Resale price maintenance :- Includes any agreement to sell goods on condition that the prices be charged on the resale by the purchaser, shall be the prices stipulated by the seller, unless it is clearly stated that the prices lower than those prices may be charged.

Sec 4 deals with the abuse of Dominant position. Dominant position means a position of strength, enjoyed by an enterprise to operate independently of competitive forces or affect its competition / consumers or the relevant market in its favour. The term, predatory price, means the sale of goods / services, at a price below the cost, as may be determined by the Regulations, with a view to reduce competition or to eliminate competition.

According to Sec. 4, No enterprise shall abuse its dominant position. If an enterprise directly or indirectly imposes unfair or discriminatory condition in

purchase /sale or price in purchase / sale of goods and services including predatory price it will the concluded that it has abused its dominant position.

Sec.5 deals with the Regulation of combinations. The term combination means acquisition of one or more enterprises by one or more persons or merger/amalgamation of enterprises.

The following are considered as combinations:-

(i) Any acquisition in India, whose assets are of the value of more than Rs. 1000 Crores / (or) Turnover Rs. 3000 Crores and

(ii) The aggregate of Assets is of the value of more than 500 million US dollars /(or) Turnover more than 1500 million US dollars in India or outside India.

Sec. 6 Contains provisions of regulation of combinations. No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect an competition with in the relevant market in India and such a combination shall be void.

Any person or enterprise who or which proposes to enter into a combination, may give notice to the commission about the proposed combination details. This should be given within seven days of the approval given by the Board of Directors meeting.

The commission shall, after the receipt of notice, deal with such notice as per Sec. 29, 30 and 31.

The above provisions shall not apply to share subscription or financing facility or any acquisition by a public financial institution/Foreign institutional investor / Bank. The acquisitions by such institutions shall, with in 7 days of the acquisition, be informed to the commission.

The next chapter III deals with the establishment / composition / Term of office of the Competition Commission of India (CCI) (Sec. 7-17)

According to section 7 of the Act, central Govt. Shall establish a commission to be called as CCI. It is a body corporate having perpetual succession and a common seal / Right to buy / own/ sell property / be used / to sue.

CCI will have one chairman and not less than 2 and not more than 10 members to be appointed by central Govt. The chairperson shall be a person of ability / integrity/ standing and who has been or is qualified to be a judge of High Court (or) having special knowledge and not less than 15 yrs. of experience in Economics/ finance /law/accountancy / industry etc., The chairperson / member shall hold the office for 5 years – Maximum age shall be 67/65 for chairperson / members respectively. Casual vacancy of the chairman will be filled by the senior most member.

Central Govt. has got powers to remove the chairperson or members on specific reasons like insolvency / imprisonment for an offence.

The Central Govt. may appoint a Director General and as may Additional, Joint, Deputy, or Assistant Director Generals to assist the commission in conducting inquiry into the contravention of any of the provisions of the Act.

CHAPTER IV :-DUTIES, POWERS AND FUNCTION OF COMMISSION:-
(SEC.- 18-40)

To achieve the objectives of the Act, the Commission will have the following duties:-

i) To eliminate practices having adverse effect on competition.
ii) To promote and sustain competition and
iii) To protect the interest of consumers and to ensure freedom of trade carried on by other participants in Indian markets.

To achieve the above, CCI may enter into Memorandum Of Understanding (MoU)/ Agreement with any foreign agency also.

According to Sec. 19, the commission may inquire into any alleged contravention of provisions of Sec 3 / 4 (Anti – competitive Agreements / abuse of dominant position). The inquiry will be done--
(i) Suo motto (ii) On receipt of a complaint from any person / consumer / consumers' Association / Trade Association (or) (iii) upon reference to it by the Central Govt. State Govt./ Statutory Authority

The Commission will consider the following factors, while determining whether an agreement has an appreciable adverse effect on competition:-

(i) Creation of barriers to new entrants in the market
(ii) Driving existing competitors out of the market
(iii) Foreclosure of competition by hindering entry into the market
(iv) Accrual of benefits to consumers
(v) Improvement in production / Distribution of goods / services
(vi) Promotion of technical / scientific and economic development.

While inquiring the dominant position of an enterprise, the commission shall consider the following factors:-

(i) Market share of the enterprise
(ii) Size and resources of the enterprise
(iii) Size and importance of competitors
(iv) Economic power of the enterprise
(v) Dependence of consumer on the enterprise
(vi) Monopoly as a result of Govt. company or public sector undertaking
(vii) Entry barriers such as regulatory carriers / financial risk/ High capital cost of entry
(viii) Market – structure and size of market.

INQUIRY INTO COMBINATION BY COMMISSION (SEE.20)

The Commission shall inquire suo motto, about any combination when such a combination has caused or likely to have an appreciable adverse effect on competition in India, with in a year, from the date of forming the combination.

While determining whether a combination would have the effect of or is likely to have an appreciable adverse effect an competition in the market, the Commission will consider the following factors.

(i) Actual / potential level of competition through imports in the market

(ii) Extent of barriers to entry into the market
(iii) Level of competition in the market
(iv) Extent of effective competition likely to sustain in a market
(v) Extent to which substitutes are available in a market
(vi) Nature and extent of vertical integration in a market
(vii) Market share of person individually and as a combination.

When the Commission receives a complaint or reference from CG/SG/ statutory Authority or suo motto, the Commission shall direct the Director General to cause an investigation to be made in the matter. The Director General shall submit a report on his findings to the Commission.

When the Commission is of the opinion that there exists no prima facie case, it may dismiss the complaint and pass orders as it deems fit. It shall forward a copy of the report of DG to the CG/SG / statutory Authority.

If the Director General reports that there is no contravention of the provisions of the Act, the complainant shall be given an opportunity to refute the findings of DG. The Commission will then, dismiss the complaint.

When the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

The commission after inquiry shall order for the following:-

(i) Direct any enterprise / Association of enterprises / Persons/ Association of persons to discontinue and not to enter such agreements / to discontinue such abuse of dominant position.
(ii) Impose any penalty
(iii) Award compensation to parties
(iv) Direct that the agreements shall stand modified
(v) Abide any other order of Commission including payment of cost and
(vi) Recommend to the CG for the division of an enterprise enjoying dominant partition.

According to Sec.29, where the Commission is of the opinion that a combination is likely to cause or has caused an appreciate adverse effect on competition , it shall issue a notice to show cause to the parties to combination as

to why an investigation in respect of such combination should not be conducted. They should respond within 30 days.

On receipt of the above response, the Commission may direct the parties to the said combination to publish the details of combination to the public and persons affected or likely to be affected by such combination. Such person/ public may submit their objections within 15 working days of such publication. The Commission may also call for additional information from the parties to the combination.

ORDERS OF THE COMMISSION ON CERTAIN COMBINATIONS SHALL INCLUDE:-

(i) approval of that combination, if the commission is satisfied

(ii) Commission may direct that the combination shall not take effect;

(iii) It may propose appropriate modification to the combination and to the parties to such combination

The parties shall carry out such modification or submit an amendment to the modifications within 30 days. The Commission may accept the amendment or direct the parties to accept the modifications already given by the commission.

The Commission may order that the acquisition of shares / acquiring of control / merger or amalgamation / shall not be given effect to.

The Commission shall have power to inquire any agreement even if it is entered into outside India / any party is outside India / when it is of the opinion that such agreement has, or likely to have an appreciable adverse effect on competition in India.

The Commission may, by order, grant a temporary injunction of any, import / restraining any party from doing any act. Or award any compensation.

Chartered Accountants/ Company Secretaries/ Cost Accountants are permitted to present the cases of their clients before the Commission.

POWERS OF THE COMMISSION:-

The Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure 1908-

(i) Summoning and enforcing the attendance of any person and examining then on oath.,
(ii) Requiring the discovery and production of documents.
(iii) Receiving evidence on affidavits.
(iv) Issuing Commissions for the examination of witness or documents.
(v) Call for any public record or document.
(vi) Dismissing an application in default or deciding ex-parte.

Every proceeding before the commission shall be deemed to be a judicial proceeding and the commission shall be deemed to be a civil court. The Commission may call any experts of economics / law / commerce / to assist in the conduct of inquiry. It may direct any person to present such books/ accounts / documents to the Director General or Registrar or any other officer.

Any person aggrieved by the orders of the Commission may apply to the commission within 30 days from the date of the order for review of its order or appeal to Supreme Court within 60 days. Every order of the Commission shall be enforced as if it were a degree / order made by a High court.

POWER OF THE CENTRAL GOVT:-

Central Govt. on the recommendation of the Commission, may direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

The order of Central Govt. may include:-

(i) Transfer of property/Rights/ liabilities /obligation
(ii) Adjustment of controls
(iii) Creation allotment, surrender or cancellation of any share / stocks/securities
(iv) Payment of compensation to any person who has suffered loss due to dominant position of such enterprise.

(v) Formulation (or) winding up of an enterprise and
(vi) Any other matter which may be necessary to give effect to the division of the enterprise.

DIRECTOR GENERAL:-

The Central Govt. may, by notification, appoint a Director General and as may Additional, Joint, Deputy or Assistant Director General or such other advisors / consultants / officers.

The DG, if directed by the commission, assist the commission in investigating into any contravention of this Act. The DG shall have all the powers as are conferred by the commission.

PENALTIES:-

When a person fails to comply with the directions of the Commission / Director General, shall be liable to pay a penalty of Rs. 1 lakh for every day of default.

Any person who contravenes any order of the Commission or fails to pay the penalty imposed under the Act, shall be imprisoned for one year and a penalty not exceeding Rs. 10lakhs.

Any person, making a false statement or omits to state any material fact or willingly alters or destroys any document, shall be imposed a penalty of Rs.50 lakhs to Rs. 1 Crore. The Commission may also lessen the penalty.

COMPETITION ADVOCACY:- (SEC-49)

Competition Commission of India acts as an Advisory body to the Central Govt. on formulation of policies on Competition.

The Central Govt. may make a reference to the Commission before finalizing any policy on competition and the effect of such policies on competition. On receipt of such a reference, the Commission shall, within 60 days give its opinion to the Central Govt. which may thereafter formulate the

policy as it deems fit. The opinion given by the Commission shall be binding upon Central Govt. in formulating such a policy.

The Commission has also been assigned the role to take suitable measures for (i) Promotion of competition advocacy (ii) creating awareness about the competition and (iii) imparting training about competition issue. The Central Govt. may exempt any class of enterprises /any practice / Agreement from the provisions of this Act.

The Central Govt. has the powers to issue directions to the Commission. It can supersede the commission at any time.

REVIEW QUESTIONS :-

1. 1.Briefly trace the origin of Competition Act,2002.

2. Define the following terms:-
   (i)Cartel (ii) Enterprise (iii)Consumer (iv)service

3. Discuss the provisions of the Competition Act,2002 regarding prohibition of dominant position and regulations of Combinations.

4. Explain the constitution of Competition Commission of India.(CCI)

5. What are the powers , duties and functions of CCI ?

6. State the meaning of 'appreciable adverse effect on competition'.

7. What are the directions included in the Order of the CCI ?

8. What are the powers of the Central Govt. under Competition Act,2002 ?

9. State the provisions of the Competition Act,2002 regarding the penalties.

10. Write notes on :-Competition Advocacy.

11. Write notes on :-(i) 'Appreciable adverse effect on competition'
(ii) 'Dominant position'.

UNIT 3:

FOREIGN EXCHANGE MANAGEMENT REGULATION ACT, 1999

LEARNING OBJECTIVES:-

i) To understand the main provisions of FEMA
ii) To be familiar with the role of Authorised Persons in Foreign Exchange Transactions and
iii) To know the Authorities enforcing the FEMA

Foreign Exchange (F /E) is essential for import and export of goods and services from and to other countries. In the pre-Independence period, India was importing more than exporting. So there was a shortage of foreign exchange at one time. It was felt essential to control India's F/E dealings.

F/E Control was first introduced in India in Sep. 1939 under Defence of India (DOI) Rules. Then the Foreign Exchange Regulation Act (FERA) was passed in 1947. This was later replaced by FERA 1973 which come into force from 1-1-1974.

With the advent of Liberalisation, privatization and Globalization (LPG) policy, the Govt. permitted Foreign Direct Investment (FDI) in many sectors in India. India became a member of WTO (World Trade Organization) from 1.1.95. Many of the provisions of FERA 1973 were relaxed and repelled. In 1999, FERA was repealed and FEMA was passed. FEMA 1999 came into force from 1-6-2000. The Govt. also framed FEMA Rules 2000. RBI is having all the powers under FEMA 1999.

OBJECTIVES OF FEMA, 1999:-

i) To consolidate and amend the law relating to Foreign Exchange with the object of facilitating external trade and payments.
ii) To promote an orderly development and maintenance of F/E markets in India
iii) To Regulate dealings in F/E and Foreign Securities
iv) To conserve the F/E Resources of the country and to utilize the same in the interest of the economic development of the country and
v) To Regulate certain payments.

FEMA 1999 has been divided in to seven chapters covering the following.

Chapter I – Definitions (Sec.-2).
Chapter II – Regulation and Management of F/E (Sec. 3-9)
Chapter III – Authorised persons (Sec. 10-12)
Chapter IV – Contravention and penalties (Sec. 13-15)
Chapter V – Adjudication and appeal (Sec.16-35)
Chapter VI – Directorate of Enforcement (Sec. 36-38)
Chapter VII – Miscellaneous (Sec. 39-52)

IMPORTANT DEFINITIONS UNDER FEMA, 1999:-

Adjudicating Authority [Section 2(a)]:- means an officer authorised for the purposes of adjudication respect of penalties under Section 13.
Appellate Tribunal [Section 2(b)]:- Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and Special Director (Appeals) under the Act.

Authorised Person [Section 2(c)]:-It includes an authorised dealer / money changer / offshore banking unit or any other person for the time being authorized to deal in foreign exchange or foreign securities.

Capital Account Transaction - Section 2(e) :- means
A transaction which alters the assets or liabilities, including contingent liabilities, outside India, of persons resident in India or the assets or liabilities in India, of persons resident outside India .

Currency Notes:-2(i)-means and includes cash in the form of coins and bank notes.

Current a/c transactions-2(j)-means a transaction other than a capital a/c transaction.

Foreign Exchange(F / E)-2(n)-means foreign currency and includes deposits, credits balance payable in foreign currency, drafts, travelers' cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in

foreign currency. It also includes any draft, traveler's cheque, letters of credit or B/E drawn by banks, institutions or persons outside India but payable in foreign currency.

Foreign security-2(O)-means any security in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in F/C but where redemption or any form of return like interest or dividend is payable in foreign security.

REGULATIONS OVER TRANSACTIONS IN F/E AND SECURITY:-

Chapter II of the Act covering Sec. 3-9 deal with Regulations and Management of F/E.

Sec 3 of the Act states that except as provided in the Act, Rules or Regulations or with the general or specific permission of RBI, a person shall not do the following:-

a. Deal in or Transfer any F/E or F/ Security to any person other than authorized person

b. Receive any payment by or on behalf of any person outside India except through authorised person and enter into any foreign transaction.
Sec 4 of the Act provides that no person resident of India shall acquire, hold, own, possess or transfer any F/E, F/S or any immovable properly situated outside India, except as provided in FEMA.

Sec.5 allows any person to sell or draw F/E to or from an authorized person, if such sale or drawl is a current a/c transaction. Central Govt. has been empowered to prescribe reasonable restrictions on current a/c transactions in public interest, in consultation with RBI.

RESTRICTIONS ON CURRENT A/C TRANSATIONS:

The term current a/c transaction has already been defined. Basically all current a/c transaction are free, unless specifically restricted by central Govt.

CURRENT A/C TRANSACTIONS WHICH HAVE NO RESTRICTIONS:-

The following current a/c transactions have no restrictions.

1. Payment for import of goods under Open General Licence or under import licence
2. Remittance of interest on investment made from abroad
3. Booking of passage for foreign travel with airline / shipping companies
4. Salary / remuneration to foreign nationals / foreign directors
5. Remittance from EEFc / RFC a/c for permitted current a/c transactions
6. Export commission and
7. Advertisements abroad

TRANSACTIONS FOR WHICH RBI'S PRIOR APPROVAL IS NECESSARY:-

Payments to the following transactions require the prior approval of RBI:-

1. Payments to artists like dancer, entertainer, wrestler etc.,
2. Release of exchange up to US$ 10,000 in one calendar year for one or more foreign visits
3. Gifts / Donations up to US $ 5,000 per annum per beneficiary
4. Release of exchange up to US $ 25,000 for business travel
5. Remittances of royalty and payment for technical collaboration / consultancy services procured from abroad
6. Release of exchange for studies abroad / medical treatment abroad up to US $ 1,00,000.

PROHIBITED CURRENT A/C TRANSACTIONS :-

1. Remittances from lottery earning
2. Remittances of income from racing / riding or any other hobby
3. Remittances for purchase of lottery tickets, banned magazines etc.,
4. Payment of commission on exports made towards equity investment in joint ventures abroad of Indian companies
5. Payment of commission on exports under rupee state credit route
6. Payment related to call back service of telephone

RESTRICTIONS ON CAPITAL A/C TRANSACTION :-

The term Capital a/c transaction has already been defined. Sec. 6 of the Act allows Capital a/c transaction, subject to certain conditions. This section empowers RBI to specify any class/ classes of capital a/c transaction permissible in consultation with the central Govt. and the limits of F/E for such transaction. F/E can be drawn or sold from an authorised person for capital a/c transactions, subject to RBI regulations.

PERMISSIBLE CAPITAL A/C TRANSACTIONS BY PERSONS RESIDENT IN INDIA:-

1. Investment in foreign securities by a person resident in' India
2. Foreign currency loans raised in India and abroad by a person resident in India
3. Transfer of immovable property outside India by a person resident in India
4. Issue of guarantees by a person resident in India in favour of a person outside India
5. Export, import and holding of currency / currency notes
6. Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India
7. Maintenance of foreign currency accounts in India and outside India by a person resident in India
8. Taking out insurance policy by a person resident in India from an insurance company outside India
9. Loans and overdrafts by a person resident in India to a person resident outside India
10. Remittance outside India of capital assets of a person resident in India
11. Sale and purchase of foreign exchange derivatives abroad by a person resident in India

PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS BY PERSONS RESIDENT OUTSIDE INDIA:-

1. Investment in India in Security issued by a body corporate or an entity in India, or in firm of proprietary concern and investment made therein by a person resident outside India

2. Acquisition and transfer of immovable property in India by a person resident outside India
3. Guarantee by a person resident outside India in favour of, or on behalf of a person resident in India
4. Import and export of currency / currency notes into/from India by a person resident outside India
5. Deposits between a person resident in India and a person resident outside India. Foreign currency accounts in India of a person resident outside India
6. Remittance outside India of capital assets in India of a person resident outside India

DUTIES OF EXPORTERS:-

EXPORT OF GOODS AND SERVICES –REALISATION AND REPARTIATION OF F/E:-

Sec. 7 of the Act deals with export of goods & services. Every exporter is required to furnish to RBI or to the prescribed authority, a declaration containing true and correct particulars, including the amount representing the full export value. If the full export value of the goods are not ascertainable at the time of export, the expected value should be stated. Every exporter should also furnish such other information as may be required by RBI for the purpose of ensuring the realisation of the export proceeds. To receive the export proceeds without delay, RBI can direct any exporter to comply with other conditions.

Similarly, in the case of export of services, every exporter shall furnish to RBI or prescribed authority, a declaration containing true and correct particulars in relation to payment of such services.

Sec.8 provides that where any amount of F/E in due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India the F/E, within such period and such manner as may be specified by RBI.

In the following cases, export of goods and services, may be made without furnishing any declaration.

1. trade samples of goods and publicity material supplied free of cost;
2. personal effects of travelers, whether accompanied or unaccompanied;
3. ship's stores, trans-cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, navel or air force authorities in India for military, naval or air force requirements;
4. goods or software accompanied by a declaration by the exporter that they are not more than Rs.25,000 in value;
5. by way of gift of goods accompanied by a declaration by the exporter that they are not more than Rs.1 lakhs in value:
6. aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their re-import into India after overhauling/repairs, within a period of six months from the date of their export;
7. goods imported free of cost on re-export basis;
8. goods not exceeding US $ 1000 or its equivalent in value per transaction exported to Myanmar
9. the goods which are permitted by the Development Commissioner of the Export Processing Zones, EHTP, ESTP or Free Trade Zones to be re-exported. replacement goods exported free of charge in accordance with the provisions of Exim policy in force, for the time being.
10. goods sent outside India for testing subject to re-import into India.
11. defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from authorized dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.
12. any other export as permitted by RBI.

AUTHORISED PERSON AND POWERS AND DUTIES OF AN AUTHORISED PERSON:-

The term Authorised Person has been defined in Sec. 2(e) of FEMA 1999. as , "An Authorised dealer, money changer, off shore banking unit or any other person for the time being authorized to deal in Foreign Exchange (F/E) or Foreign Securities"(F/S).

Chapter III of the Act deals with the provisions relating to Authorised Persons in Sections 10 to 12.

Any person, who wants to act as an Authorised person in dealing F/E or F/S, can make an application to RBI to act so. RBI may authorize such person to act as Authorised Dealer, money changer or off shore banking unit subject to certain conditions.

Authorised Persons must comply with the directions of the RBI with regard to dealing in F/E or F/S. Following are the powers and duties of an authorized person.

POWERS OF AN AUTHORISED PERSON:-

1. 1.To deal in or transfer any foreign exchange or foreign security to any person.
2. To receive any payment by order or on behalf of any person resident outside India in any name. However, an authorised person is not allowed to credit the account of any person without any corresponding remittance from any place outside India.
3. To open NRO, NRE, NRNR, NRSR and FCNR accounts.
4. To sell or purchase foreign exchange for current account transactions.
5. To sell or purchase foreign exchange for permissible capital account transactions.

DUTIES OF AN AUTHORISED PERSON:--

1.DUTY TO COMPLY WITH THE DIRECTIONS OF RBI:

Authorised persons are required to comply with the directions of the Reserve Bank of India with regard to their dealings in foreign exchange or foreign security with the previous permission of the Reserve Bank.

2. **DUTY NOT TO ENGAGE IN ANY UNAUTHORISED TRANSACTIONS** :-

Authorised persons are required not to engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorization.

3.DUTY TO ENSURE THE COMPLAIANCE OF PROVISIONS OF THE ACT AND DUTY TO REPORT TO RBI:-

An authorised person, before undertaking any transaction on behalf of any person shall, require that person to make a declaration and give necessary information. Such person has to satisfy the authorised person that the transaction will not involve or is not intended to violate or contravene any of the provisions of the Act, rules, notification or directions. In case, if the person refuses to comply with such requirements or makes only unsatisfactory compliances, the authorised person can refuse to act on behalf of such person in such transaction and report the matter to Reserve Bank of India.

4.DUTY TO MAINTAIN PROPER BOOKS OF A/CS AND TO PRESENT THE SAME DURING INSPECTION BY RBI:-

RBI is empowered to inspect the business of any authorized person for the purpose of verifying the correctness of any statement/information or particulars furnished. In case authorised person fails to furnish the information sought, the RBI can initiate inspection of the authorised person for obtaining such information. RBI may also inspect the business of an authorised person for securing compliance with the provisions of the Foreign Exchange Management

Act or any of the Rules, Regulations or directions. The Reserve Bank may make an order in writing authorizing any of its officer for this purpose.

When an inspection is initiated by the Reserve Bank, it shall be the duty of every authorised person , to produce before the inspecting officer, such books, accounts and other documents in his custody. The authorised person has also a duty furnish any statement or information relating to the affairs of such authorised person within the time limit and the manner in which such inspecting officer may direct.

POWER OF THE RESERVE BANKOF INDIA TO ISSUE DIRECTIONS TO AUTHORIZED PERSON :-

Section 11 of the Act empowers the RBI to issue directions to the authorized person in regard to making of payment or doing or desist, from doing any act relating to foreign exchange or foreign security. Reserve Bank has also been empowered to issue directions to the authorised persons to furnish such information in such manner as it deems fit. If any authorised person contravenes any direction given by the RBI or fails to file the return as directed by RBI, he may be liable to a fine not exceeding Rs. 10,000/- and in the case of continuing contravention, with an additional penalty which may extend to Rs. 2,000 for every day during which such contravention continues.

POWER OF RESERVE BANKOF INDIA TO INSPECT AUTHORISED PERSON:-

RBI is empowered to inspect the business of any authorized person for the purpose of verifying the correctness of any statement/information or particulars furnished.

REVOCATION OF PERMISSION GIVEN TO AN AUTHORISED PERSON:-

Reserve Bank of India has been empowered to revoke the authorisation granted to any person, at any time, in the following cases:-
(i)If it is necessary in the public interest.

(ii) If the authorised person fails to comply with the conditions subject to which the authorisation was granted or contravened any of the provisions of the Act, rules, notifications or directions of RBI.
Before revocation, the authorised person will be given an opportunity of being heard to explain his case.

DUTIES OF PERSONS HOLDING F/E OTHER THAN AUTHORISED PERSONS :-

Any person, who has acquired or purchased foreign exchange for any purpose, must use the F/ E obtained by him. Normally he has to give a declaration and state the purpose for which he is obtaining F/E. If the person does not use it for such purpose, he has to surrender the same to the authorised person, within a specified time . If he fails to do so, or uses the foreign exchange for any acts not permitted under the provisions of the Act, such person shall be deemed to have committed contravention of the provisions of the Act.

CONTRAVENTION AND PENALTIES.

Chapter IV of the Act, containing Sections 13 to 15, deals with contravention and penalties. Section 13 deals with penalties, Section 14 provides for enforcement of the orders of Adjudicating Authority and Section 15 deals with compounding of contraventions.

Section 13 provides that any person contravenes any provision of the Act, or any condition, rules, regulations, notification and directions or orders given by RBI, shall be liable for penalty. The penalty may extend up to thrice the sum involved in such contravention where such amount is quantifiable or up to Rs.2 lakhs where the amount is not quantifiable. If the contravention continues, the penalty of Rs. 5,000 per day during the period in which the contravention continues, shall be payable.

The Adjudicating Authority, is also empowered to confiscate any currency, security or any other money or property in respect of which the contravention has taken place. He may further direct that the foreign exchange holdings if any, shall be brought back either to India or retained outside India, in accordance with the directions.

If any person fails to make payment of penalty imposed, within 90 days of notice issued, he shall be liable for civil imprisonment for six months. If the amount involved is more than Rs. 1 crore, the civil imprisonment can be for three years.

DIRECTORATE OF ENFORCEMENT, SPECIAL DIRECTOR (APPEALS) AND APPELLTATE TRIBUNAL:

The Central Govt. has been empowered to establish a Directorate of Enforcement with a Director and other officers to enforce the FEMA. There may be Additional Directors , Special Directors, Deputy Directors and Asst. Directors in the Directorate of Enforcement.

These officers can take up for investigation any contravention of the provision / Rules of FEMA. They have powers similar to that of Tax authorities under I.T. Act 1961.

Central Govt. can authorize certain officers as 'Adjudicating Authorities.' They can adjudicate cases in respect of violations of FEMA. The Adjudicating Authorities can hold an enquiry only on receiving a complaint from an authorized officer. The adjudicating authorities may impose a penalty.

ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY

If a person fails to make full payment of the penalty imposed within a period of 90 days from the date on which the notice of payment of such penalty is served on him, he shall be liable for civil imprisonment. Before that, he shall be issued a show cause notice as to why he should not be committed to civil imprisonment.

The defaulter may be issued by the Adjudicating Authority a warrant of arrest. A warrant issued by one Adjudicating Authority may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter is found, and the person so arrested shall be brought before the Adjudicating Authority issuing warrant within 24 hours of arrest, excluding however the time taken in journey.

On arrest, if the defaulter pays the amount entered in the warrant as due and the cost of arrest to the arresting officer, then the defaulter shall be released immediately.

COMPOUNDING OF CONTRAVENTION OFFENCES :-

Any contravention can be compounded by the person committed contravention by making an application. Compounding means a compromise, where the person agrees to pay certain amount as compounded fee and the authority agrees to drop further proceedings in the matter after payment of compounding fee. Compounding is not permitted if adjudication is complete and appeal has been filed by the person.

SPECIAL DIRECTOR (APPEALS):-

The Central Govt. shall appoint one or more Special Directors (Appeals) to hear appeals against the orders of Adjudicating authorities. There is a prescribed form to make an appeal. The appeal should be made with a requisite fee, within 45 days from the date of the receipt of the order by the aggrieved person. The Special Director has power to entertain appeals even after 45 days, if he is satisfied that there is sufficient cause for the delay.

The Special Director (Appeals) may, after hearing the parties to the appeal, pass such order as he thinks fit. He may confirm, modify or set aside the order appealed against.

He may send the copy of the order to the parties concerned and to the Adjudicating officer. The Special Director (Appeals) shall have the same powers similar to that of a civil court.

APPELLATE TRIBUNAL:-

Central Govt. has been empowered to constitute an Appellate Tribunal. to hear any appeal against the orders of the Special Director (Appeals) or the Adjudicating Authorities. The person, who is making an appeal against the order of such authorities, is directed to remit the penalty levied if any. The Appellate Tribunal can exempt such person from depositing that penalty.

Every appeal to the Appellate Tribunal (AT) shall be made within 45 days by the aggrieved person, from the date of receiving the copy of the order of Special Director (Appeals) or Adjudicating Authority. However AT can entertain an appeal even after the above time limit, if he is satisfied with the reasons for the delay.

The AT shall give an opportunity for both the parties to explain their stand. AT may pay orders confirming, modifying or setting aside the order appealed against. The copy of such order shall be sent to the parties concerned.

AT shall dispose the appeals within 180 days from the date of receipt of appeal. If delayed, the AT shall record the reasons for the same.

The Appellate Tribunal and Special Director (Appeals) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, as stated below.

1. Summoning of witnesses and enforcing attendance of any person and examining him on oath.
2. Requiring discovery and production of any document.
3. Receiving evidence on affidavits.
4. Requisitioning any public record or document or copy of such record document from any office.
5. Reviewing its decisions
6. Dismissing a representation of default or deciding it ex-parte
7. Setting aside any order of any representation for default or any order passed by it ex-parte.

The order of the Appellate Tribunal can be appealed to High court within 60days from the date of communication of the decision or order of the Tribunal. The High Court can entertain any appeal beyond this period if it is satisfied with the reasons for the delay.

REVIEW QUESTIONS:

1.State the objectives of FEMA, 1999.

2.Define the following terms according FEMA 1999.

(i)Foreign exchange (ii) Foreign security

(iii)Authorised person (iv) Capital a/c Transaction

(v) Current a/c transaction (vi) currency notes.

3.How are Foreign exchange and Foreign Security transactions are regulated by FEMA, 1999?

4.Define Current a/c Transaction. What are the current a/c transactions, on which there are no restrictions ?

5.What are the situations in which payment for current a/c transaction are prohibited?

6.Define Capital a/c transaction? What are the permissible Capital a/c transactions?

7.What are the prohibited capital A/c transaction as per FEMA Rules 2000?

8. Discuss the provisions of FEMA on export of goods and services and realisation and repatriation of F/E,

9.What type of goods and services can be exported without furnishing any declaration?

10.Who is an Authorised Person? What are his powers and duties?

11.Under what circumstances, the authorisation given to an Authorised person may be revoked by RBI?

12.Write a note on:- Directorate of Enforcement.

13.Who are Adjudicating Authorities ? What are their powers?

14.Who are Special Directors (Appeals)? What are their powers?

15.Write a note on compounding of offences under FEMA, 1999.

16.What is an Appellate Tribunal? What are its powers?

17.What are the powers of Special Director (Appeals) and Appellate Tribunal, that are similar to a civil court?

UNIT IV

POLLUTION CONTROL LAWS

LEARNING OBJECTIVES:-

- To understand the important definitions under the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981
- To know the functions of Central Board and State Board constituted under the Pollution Control Laws and
- To be aware of the recent Govt. policies in protecting the environment

The Central Govt. has passed the Water (Prevention and control of Pollution) Act in 1974, with the following objectives:-

i. To provide for the prevention and control of water pollution
ii. To maintain and restore the wholesomeness of water
iii. To establish Boards with reference to prevention and control of pollution, and
iv. To confer and assign to such Board certain powers and functions relating to prevention and control of pollution.

The Act has been amended many times.
Sec. 2 of the Act gives the following important Definitions:-

1. Occupier:- means the person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance (Section 2(d)].

2. "Outlet" includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution. (Section 2(dd)]

3. "Pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely

to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. (Section 2(e)]

4. "Sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains. [Section 2(g)]

5. "Sewer" means any conduit, pipe or channel, open or closed, carrying sewage or trade effluent. [Section 2(gg)]

6. "Stream" includes:

(a) river;
(b) water course (whether flowing or for the time being dry);
(c) inland water (whether natural or artificial);
(d) sub-terranean waters;
(e) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.

7. "Trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage. (Section 2(k)].

Under this Act, the Central Govt. has constituted Central Board and the concerned state Govts. have constituted State Pollution Control Boards. For example, in Tamil Nadu, the Tamil Nadu State Pollution Control Board (TNPCB) has been constituted.

The constitution and functions of Central Pollution Control Board and State Pollution Control Board and Joint Boards have been discussed below:-

CONSTITUTION OF CENTRAL POLLUTION CONTROL BOARD

Section 3 of the Act empowers the Central Government to constitute a Central Pollution Control Board to exercise such powers and functions as may be conferred upon it. The Central Board shall consists of the following members, namely:

a. full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;
b. such number of officials not exceeding five to be nominated by the Central Govt.
c. such number of officials not exceeding five to be nominated by the Central Government from amongst the members of the State Boards, of whom not exceeding two shall be from amongst the members of the local authorities functioning within the state;
d. such number of non-officials not exceeding three to be nominated by Central Government to represent the interests of agriculture, fishery or industry or trade or any other interest, which, in the opinion of the Central Government, ought to be represented;
e. two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by the Central Government
f. a full time member secretary possessing qualifications and experience scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

QUALIFICATIONS AND DISQUALIFICATIONS OF THE MEMBERS:-

Section 5 of the Act deals with terms and conditions of service of the members. A member ,other than a member secretary, is entitled to hold office for three years. A member may continue to hold office.
till his successor enters upon his office. The term of office of a member nominated by the Central/State Government shall come to an end as soon as he

ceases to hold office under the Central/State Government etc. Any member of the board may be removed before the expiry of his term of office, after giving a reasonable opportunity of showing cause against such removal. The Chairman or member could resign the office by giving a letter of resignation duly signed by that member. A casual vacancy could be filled by a fresh nomination. A member is eligible for re nomination.

DISQUALIFICATIONS

Section 6 of the Act deals with disqualification of a person to be a member of the Board. Accordingly, no person shall be a member of a Board, who:

(i) is or at any time has been adjudged insolvent or has suspended payment of his debt or has compounded with his creditors, or

(ii) is of unsound mind or stands so declared by a competent court, or

(iii) is, or has been convicted of an offence which, in the opinion of the Central Government, or as the case may be, of the State Government, involves moral turpitude, or

(iv) is, or at any time, has been, convicted of an offence under this Act, or

(v) has directly or indirectly, by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, industrial plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(vi) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board. or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(vii) has so abused in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to

render his continuance on the Board detrimental to the interest of the general public.

However, no order of removal shall be made by the Central Government or State Government unless the member concerned has been given reasonable opportunity of " being heard.

FUNCTIONS OF CENTRAL BOARD:-

Section 16 of the Act specifically deals with functions of the Central Board. It empowers the Central Board to promote cleanliness of streams and wells in different areas of the States. Besides, the Central Board may perform all or any of the following functions, namely:

a. advise the Central Government on any matter concerning the prevention and control of water pollution;
b. co-ordinate the activities of the State Boards and resolve disputes among them;
c. provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
d. plan and organise the training of persons engaged or to be engaged in programme for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;
e. organise through mass media a comprehensive programme regarding the prevention and control of water pollution;
f. collect, compile and publish technical and statistical data relating to water pollution and the measures devise for its effective prevention and control and prepare manuals, course or guides relating to re-treatment and disposal of sewage and the trade effluents and disseminate information connected therewith;
g. lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or a well. However different standards may be laid down for the same stream or well or for different streams or wells having regard to the quality of water, flow characteristic of stream or well and the nature of the use of water in such stream or well or streams or wells;

h. plan and cause to be executed a nation-wide programme for prevention, control or abatement of water pollution;
i. perform such other functions as may be prescribed.
j. In addition, Central Board shall also perform such of the functions of the State Board as may be specified in an order made under Section 18(2). Under Section 18(2) the Central Government may direct the Central Board to perform the functions of a State Board which had defaulted in complying with any directions given by the Central Government.

The Board is also empowered to establish or recognise a laboratory or laboratories to enable it to perform its functions efficiently, including the analysis of samples of water from any stream or well or of samples or any sewage or true effluents.

CONSTITUTION OF STATE POLLUTION CONTROL BOARD:-

Section 4 of the Act empowers the State Government to constitute the State Board. The composition of a State Board shall be the following, namely:

1. a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with matters aforesaid, to be nominated by the State Government. However. Chairman may be either whole-time or part-time, as the State Government may think fit;
2. such number of officials not exceeding five, to be nominated by the ~ Government to represent that Government;
3. such number of persons not exceeding five to be nominated by the Governing from amongst the members of the local authorities functioning within the State;
4. such number of non-officials not exceeding three to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interests, which, in the opinion of the Government, ought to be represented;
5. two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government.

6. a full-time member secretary having such qualification , knowledge, experience of scientific, engineering or management aspects of pollution control to be appointed by the State Government.
   The State Board shall also be a body corporate like the Central Board..

FUNCTIONS OF A STATE BOARD:-

The following are the functions of the State Board.

a. to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof
b. to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
c. to collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;
d. to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
e. to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programme relating to prevention, control or abatement of water pollution and to organise mass education programme, relating thereto;
f. to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plants, specifications or other data relating to plants set up for the treatment of water works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act.
g. to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an Inter State stream resulting from the discharge of effluents and to classify waters of the State;
h. to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the

prevailing flow characteristics of water streams and wells which render it impossible to attain even the minimum degree of dilution;

i. to evolve methods of utilization of sewage and suitable trade effluents in agriculture;

j. to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year, the minimum degree of dilution;

k. to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(I) to make, vary or revoke any order

(i) for the prevention, control or abatement of discharges of waste into stream or wells.

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(iii) to lay down effluent standards to be complied with by persons while causing discharge and trade effluents standards of the sewage and trade effluents;

or to modify alter or extend any such existing system CTP or both and to lay down, modify or annul effluent

(n) to advise the State Government with respect to the location of any industry, the carrying of which is likely to pollute a stream or well.

It may also perform such other functions as the Central Government may entrust to it.'.

Further, the Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions, including the analysis of samples of water from any stream or well or samples of any sewage or trade effluents.

CONSTITUTION OF JOINT BOARD

Section 13 of the Act enables the constitution of Joint Boards by two or more Governments of contiguous States, or by the Central Government and one or more State Governments contiguous to any Union Territory. The Joint Boards are to be constituted by an agreement. Section 14 of the Act provides for the following composition of Joint Boards, constituted under agreement between two or more Governments of contiguous States, namely

a. a full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or persons having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;
b. two officials from each of the participating State to be nominated by the concerned participating State Government to represent that Government;
c. one person to be nominated by each of the participating State Government from amongst the members of the local authorities functioning within the State concerned;
d. one non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry trade in the State concerned or any other interest which, in the opinion of the participating State Government, is to be represented;
e. two persons to be nominated by the Central Government to represent two companies or corporations owned, controlled or managed by the participating State Governments;
f. a full time member secretary having such qualifications, knowledge having experience of scientific, engineering or management aspects of pollution control to be appointed by the Central Government.

The Joint Board constituted by an agreement by the Central Government in respect of one or more Union Territory and one or more Governments of the State in the vicinity of such Union Territory or Union Territories, shall consists of the following members namely:

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or

persons having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government:

(b) two officials to be nominated by the Central Government from the participating Union Territory or each of the participating Union Territories, as the case n be, and two officials to be nominated from the participating State or each the participating States, as the case may be, by the concerned participating State Government;

one person to be nominated by the Central Government from amongst: members of the local authorities functioning within the participating union

POWERS OF STATE BOARD TO PREVENT AND CONTROL WATER POLLUTION:-

1.POWER TO DECLARE CERTAIN AREAS AS CONTROLLED AREAS

Section 19 of the Act empowers the State Government to restrict the application of the Act only to some specific area or areas. This area may be called as the Water Pollution and Prevention control area. This may be published in the Official Gazette of the Govt. Water Pollution Prevention and Control area may be declared either by reference to a map or by reference to a line of water shed or boundary of any district or partly by one method and partly by the other. The State Government has also powers to alter any Water Pollution Prevention and Control Area by way of extension or reduction, or define new Water Pollution Prevention and Control Area. It can also order for the merger of one or more Water Pollution Prevent and Control Areas or any parts there of.

2. POWER TO MAKE SURVEYS:-

The State Board or any officer authorised by it to make surveys of any area. It can order to keep records of the flow of volume and other characteristics of any stream or well in such an area. It may take steps for the measurement and recording of the rainfall in such area or any part thereof. It can order to carry out stream surveys and may take such other steps as may be necessary in order to obtain information for the above purposes.

3. **POWER TO GIVE DIRECTIONS**:-.

A State Board may give directions to any person who, in its opinion, is abstracting water from any such stream or well in substantial quantities. He may also be discharging sewage or trade effluent into any such stream or well. He may be directed to give such information as to the abstraction or the discharge.

The State Board may give directions requiring any person to furnish to it, information regarding the construction, installation or operation of such establishment or of any disposal system in a prescribed format.

4.. **POWER TO TAKE SAMPLES OF EFFLUENTS**:-

The State Board or any officer authorized is empowered to take for the purpose of analysis, samples of water from any stream or well or samples of any sewage or trade effluent . The report of such analysis shall be submitted by the analysts to the Board. A copy of the report shall be sent to the occupier of a factory or to his agent and a copy shall be kept available for submission in the Court as an evidence.

5.**POWER OF ENTRY AND INSPECTION:-**

The State Board may empower any person to enter, with such assistance as he considers necessary, any place:

a. to perform any of the functions of the Board entrusted to him;
b. to verify whether the provisions of the law have been complied with or not
c. to examine any plant, record, register, document or any other material object (d) to conduct a search of any place
d. to seize any such plant, record, register, document or the material object,

However, right to enter for inspection, shall be exercised only at reasonable hours.

6. POWER TO TAKE EMERGENCY MEASURES IN CASE OF POLLUTION OF STREAM OR WELL :-

Certain emergency measures have also been provided under this Act. If the State Board is of the opinion that any poisonous, noxious or polluting matter has entered into that stream or well ,then it can take immediate action. It may carry such operations as it may consider necessary for all or any of the following purposes:

(a) removing that matter from the stream or well and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence on the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well, or from making in sanitary use of the stream or well.

7. POWER TO GIVE DIRECTIONS TO CARRY OUT CERTAIN WORK

Before the commencement of the Act, some industries might have discharged the sewage or their trade effluent in any stream or well. After the implementation of this Act, the occupiers of these industries have been given directions to make certain constructions or work . If such works has not been executed within such time, the State Board may serve on the person concerned a notice requiring him to execute the work immediately.

(2) If the person concerned fails to execute the work as required in the notice referred to above, then, after the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work.

(3) All expenses incurred by the State Board for the execution of the aforesaid work, together with interest may be recovered by that Board from the person concerned, as arrears of land revenue .

8. POWER TO ACQUIRE LAND COMPULSORILY:-

The State Board is empowered to acquire any land compulsorily needed for the efficient performance of its functions. Land should be acquired as per the provisions of the Land Acquisition Act, 1894 or under any other corresponding law.

9.POWER TO MAKE APPEAL TO COURT:-

The State Board can make an appeal to the Court for prohibiting person from polluting water in streams and in wells.

DUTIES OF OCCUPIERS:-

Occupier means any person who has control over the affairs of the factory. He has been entrusted with certain duties to be observed to prevent and control water pollution. The Act ensures that the industrial effluents are not allowed to be discharged into water resources without proper treatment.

PROHIBITION ON USE OF STREAM OR WELL FOR DISPOSAL OF POLLUTING WATER:--

Section 24, with a view to prevent pollution of water by discharging poisonous, noxious or other polluting substances, provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter into any stream or well.

RESTRICTION ON NEW OUTLETS AND NEW DISCHARGES:-

Section 25 of the Act places certain restrictions on new outlets and new discharges. It is obligatory on the part of a person to obtain the consent of the Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water. The Boards may limit their consents for suitable period so as to enable them to monitor observance of the prescribed conditions.

Without the previous consent of the State Pollution Control Board, no person is authorised to:

(i) establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or
(ii) bring into use any new or altered outlet for discharge of sewage; or
(iii) begin to make any new discharge of sewage or trade effluent

The application for consent should be made in the specified form and manner accompanied by the prescribed fee. When an application for consent is received the State Board make such enquiry as it may deem fit. The procedure for, making the enquiry is specified in the Rules framed by the State Government While grant consent for establishment of any industry, operation etc. or for bringing into use any new or altered outlet, the Board may impose conditions as to the point of discharge of sewage or trade effluent.

In the case of consent for new discharge, it may impose conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discard is to be made. Such consent would be valid only for such pèriod as may be specific in the order. The conditions imposed by the Board are binding on the person establishing or taking steps to establish any industry, operation or process or treatment .

The Board can also refuse to grant consent. If it is so, the reasons for that should be given in writing. If any person carries on any work without the permission of the Board, then it may serve on the person concerned a notice, prohibiting the person to carry out his activities.

The Act directs every State Board to maintain a register containing particulars of the conditions imposed. The register, relating to any outlet or to any effluent from any land or premises, shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises as the case may be or by any person authorized by him in this behalf.

When an application for consent is made, the consent shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of the application.

REFUSAL OR WITHDRAWAL OF CONSENT BY A STATE BOARD

Section 27 empowers a State Board to grant or refuse to grant its consent for the establishment of any industry, operation or process or treatment and disposal system . The refusal can also be reviewed by the Board. Any person aggrieved by the orders of the State Board can make an appeal to an appellate authority, named by the State Govt. Such an appellate authority, shall dispose of the appeal quickly.

OFFENCES BY COMPANIES:-

Section 47 of the Act deals with the offences by companies. If an offence has been committed by a company, every person responsible to the company for the conduct of the business, shall be deemed to be guilty of the offence . He shall be liable to be proceeded against and punished accordingly. However, if any such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he shall not be liable to punishment.

Where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, then such director, manager. Secretary or other officer shall also be deemed to be guilty of that offence. They shall be liable to be proceeded against and punished accordingly.

Section 48 of the Act provides that where the offence under the Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence. He shall be liable to be proceeded against and punished accordingly.

But the Head of the Department shall not be liable to punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent commission of such offence.

The Central Govt. has been empowered to supersede the Central Board and Joint Boards. Similarly, the State Govt. can supersede the State Board in the following circumstances :-

I. When the Board concerned has persistently made default in the performances of the functions imposed on it by or under the Act; or
II. when it is necessary in the public interest to do so.

THE CONCEPT OF SUSTAINABLE DEVELOPMENT:-

This concept was first highlighted at the United Nations Conference on the Human Environment held at Stockholm in June 1972.

Supreme Court has taken a tough view in respect of pollution. Various Public Interest Litigations (PIL) were filed before Supreme Court for protection of environment. In Chota Lal Siddu Vs. Union of India, the Supreme Court has held that environmental protection is a constitutional mandate. It is the commitment of a country to the welfare of the people.

In Vellore citizens welfare forum Vs Union of India, The Supreme court observed:-

"The traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable Development is the answer.

Sustainable Development means Development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs. Sustainable Development, as a balancing concept between ecology and development has been accepted as a part of the customary International Law."

AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981.

Air pollution is considered to be a health hazard. Certain industries have been identified as highly polluting in nature. The Letters of Indent issued to such industries initially, will not be converted into an Industrial Licence, unless adequate environmental pollution preventive measures have been undertaken as per the stipulation of the State Board.

The first state level, air pollution control law dates back to 1912. The British rule brought Bombay Smoke Nuisance Act in 1912, with a view to control smoke emissions.

After the Water (Prevention and control of pollution) Act, 1974, the Central Govt. passed the Air (Prevention and control of pollution) Act in 1981 which came into force from May 16th 1981.

OBJECTIVES OF THE AIR (P AND C OF P) ACT 1981 :-

1.To provide for the prevention control and abatement of (Put an end to) air pollution.

2.To establish Boards for carrying out the above said purposes and

3.To confer and assign to such Boards powers and functions relating thereto and for matters connected therewith.

The following are some of the important definitions under Sec. 2 of the Act:-

1.Air Pollution means the presence in the atmosphere of 'air pollutant'

2. Air Pollutant means any solid, liquid or gaseous substance, including noise, present in atmosphere in such concentration as may tend to be injurious to human beings, living creatures or plants or property or environment. Emission has been defined as any solid or liquid or gaseous substance, coming out of chimney, duct or fuel or any other outlet

3.Chimney means any structure with an opening or outlet from or through which any air pollutant may be emitted

4.Control Equipment means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant. It includes any device used for securing the efficient operation of any industrial plant

5.Industrial Plant means any plant used for any industrial or trade purpose. and emitting any air pollutant into the atmosphere

6. Emission has been defined as any solid or liquid or gaseous substance, coming out of chimney, duct or flue or any other outlet

AUTHORITIES UNDER THE AIR (P&C OF POLLUTION) ACT,1981

To prevent and control air pollution, Sec.3 of the Act authorises the Central Govt. to constitute Central Pollution Board . The Board which has already been constituted under the Water (P & C of Pollution)Act,1974 shall perform the functions under this Act also.

Similarly, in the case of State Govts. the State Boards which have been already functioning under Water (P & C of Pollution) Act,1974 shall perform the functions under this Act also. In case, if there is no existing State boards, the

concerned State Govt. is to constitute them for prevention and control of air pollution.

The constitution and functions of the Central Board, State Board and Joint Boards are the same as under Water (P & C of Pollution) Act,1974.

POWERS OF THE STATE BOARD TO PREVENT AND CONTROL AIR POLLUTION:-

AIR POLLUTION CONTROL AREAS –

State Government, after consultation with State Board, by notification, can declare any area as 'air pollution control area'. Such area can be added, deleted or altered by notification . State Government can prohibit burning of any material (other than fuel) in such area; if it is likely to cause air pollution. It can also order that (a) only approved fuel should be used in such an area (b) only approved appliance be used for burning of any fuel or for generating or consuming any fume, gas or particular matter. Such approval of fuel or appliance can be given by State Board .

INSTRUCTIONS TO VEHICLE REGISTRATION AUTHORITIES –

State Government, after consulting State Board, may give necessary instructions to the registering authorities under Motor Vehicles Act in connection with maintenance of standards for emission of air pollutants. Such authority is bound to act on such instructions

RESTRICTIONS ON ESTABLISHMENT OF INDUSTRIAL PLANTS.

No person can establish any industry in air pollution control area without previous consent of the State Board. Application should be in prescribed form, accompanied by necessary fees. A person already operating an industry in the control area, has to apply for the permission with the necessary fees to the State Board within three months. After making necessary enquiries, the Board may grant the consent subject to certain conditions or the consent may be refused. The consent can be subject to conditions. Such permission or refusal should be made within four months. If the person fails to fulfill the conditions, the State

Board can cancel its consent, after giving the opportunity to the person of being heard.

The person to whom the consent is granted shall follow the following conditions –

(i) The control equipment, as specified and approved by the board, shall be installed and operated in the premises.
(ii) Existing equipment shall be replaced as per directions of State Board.
(iii) The equipment shall be for all times in good running condition.
(iv) Chimney shall be erected as per approved specifications.
(v) Other conditions as may be specified. Any change in the control equipment., chimney etc. should be as per approval of State Pollution Control Board. The State Government can make any changes in the directions given, which may be necessary due to technological changes or any other reasons.

RESTRAINING PERSON FROM CAUSING AIR POLLUTION.

Any person operating any industrial plant shall not allow emission of air pollutants in excess of the standards laid down by State Board.

State Board can apply to Judicial Magistrate or Metropolitan Magistrate for restraining persons from causing air pollution. The court can give the order as it deems fit. Court can order a person restraining him from discharging air pollutants. Court can authorise Board to implement the said direction

PERSONS TO INFORM THE BOARD IF POLLUTION IS IN EXCESS -

Where in and area, the emission of air pollutants is in excess to the standards laid down by State Board (or is likely to increase), the person in charge of the premises, shall inform the fact to State Board or agencies or authorities necessary. The Board shall take necessary remedial measures to mitigate the emission of such air pollutants. The expenses incurred for mitigating the emission can be recovered from the person concerned

POWERS OF STATE BOARD UNDER AIR POLLUTION ACT –

POWER OF ENTRY AND INSPECTION –

A person authorised by the Board, can enter any premises for inspection, for testing, examination or to search to determine whether any offence under the Act is being committed and to see whether directions given are being complied with. If any person resists to such inspection, it will be considered as an offence

POWER TO OBTAIN INFORMATION –

The State Board can call any information from the occupier for purposes of the Act. The Board can authorise any person to inspect the premises to verify the correctness of the information given to the Board .

POWER TO TAKE SAMPLES OF AIR OR EMISSION –

Board can take sample of air or emission for analysis. When a sample is taken, the person taking sample shall serve a notice on the occupier or his agent of his intention to analyse the sample. The person shall take sample in the presence of the occupier or his agent. Sample shall be placed in a marked and sealed container and signed by person taking the sample and the occupier. Sample should be sent to the approved laboratory report of such analysis is admissible in any legal proceeding. Copy of the report should be given to the occupier or his agent.

POWER TO ISSUE DIRECTIONS –

The State Board can issue directions to any person, officer or authority in exercise of its powers and functions under the Act. The directions can include (a) closure, prohibition or regulation of industry (b) stoppage or regulation of supply of electricity, water or any other service

ESTABLISHMENT OF APPROVED LABORATORIES:-

The State Government can establish approved State Air Laboratories. It can also appoint persons with prescribed qualifications as 'Government Analysts'. State Board can also appoint persons with prescribed qualifications as 'Board Analyzers for analyzing the samples.

APPEAL AGAINST ORDER OF BOARD –

Appeal against order of State Board can be made within 30 days to Appellate Authority as may be prescribed by State Government. Appeal cannot be made to the Civil Court against the orders of the State Board .

PENALTIES: -

Failure to comply with the provisions of section 21, 22 or 31A is punishable with imprisonment for a minimum period of eighteen months. It can be extended up to 6 years and a fine. In case of continuing offence, even after punishment, an additional fine up to Rs. 5,000 per day can be levied for every day of continuance..

Any person (i) who damages any work or property of the Board;

(ii)obstructs any person acting as per directions of board;

(iii) fails to furnish any information required by the board;

(iv) fails to intimate occurrence of emission of air pollutants into air or provides any information which is false,

shall be punishable with imprisonment for a term which may extend to 3 months and/or with fine up to Rs. 10,000

In Case the offence is committed by the company, every officer and person responsible for the working of the company and also the company shall be deemed to be guilty of offence and liable for punishment, unless the person proves that the offence was without his knowledge Where the offence is committed by Government department, the head of the department is deemed to be guilty of offence and liable to punishment unless he proves that the offence was committed without his knowledge No legal proceedings can be instituted against Government, any officer of Government or of the Board for any act done in good faith for discharging the duties and functions under the Act.

The court shall not take cognizance of any offence under this Act except (i)on complaint made by a board or any officer authorised in this behalf or (ii) any

person who has given notice of not less than 60 days in prescribed manner of the offence and his intention to make a complaint to the board.

All the members, officers, employees of board discharging functions as entrusted by the Act are deemed to be the public servants

REVIEW QUESTIONS :-

1) 1What are the objectives of Water (Prevention and Control of Pollution) Act 1974 ?
2) Define the following terms as for the Water (Prevention and Control of Pollution) Act 1974:-
   (i) Pollution (ii) Occupier (iii) Stream (iv) Trade effluent
3) Who are the members of Central Board and State Board under Water (Prevention and Control of Pollution) Act 1974?
4) Discus the constitution and function of Central Board.
5) Explain the constitution and function of State Pollution Control Board
6) Write a note on Joint Boards under water (Prevention and Control of Pollution) Act 1974.
7) Discuss the powers of the State Board to prevent and control water pollution.
8) What are the duties of occupiers under the Water (Prevention and Control of Pollution) Act,1974?
9) Write a note on Offences by companies under the Water (Prevention and Control of Pollution) Act, 1974.
10) What are the objectives of Air (Prevention and Control of Pollution) Act 1981?
11) Define the following Terms:-

(i) Air Pollution (ii) Air Pollutant (iii) Control equipment under Air (Prevention and Control of Pollution) Act 1981.

12) What are the steps taken by the Central Govt. to control pollution under Air (Prevention and Control of Pollution) Act 1981?
13) What are the powers of the State Board under Air (Prevention and Control of Pollution) Act 1981?
14) Write notes an:- (i) Approved Laboratories (ii) Govt. Analysts
15) Explain the concept of Sustainable Development.

UNIT –5

ENVIRONMENT (PROTECTION) ACT, 1986

LEARNING OBJECTIVES:-

i) To understand the important provisions of Environment (Protection) Act, 1986 and the Rules made the under

ii) To know the various legal regulatory frame work in protecting the environment.

Nowadays, there is an increased awareness among the public, regarding the Environment Pollution and Environment Protection throughout the World. Every year, 5th June is celebrated as World Environment Day.

In India, to protect the Environment, the central Govt. has passed the Environment (Protection) Act, 1986 with the following Objectives:-

(i) To provide for the protection and improvement of environment and

(ii) To prevent Hazards to Human beings, other living creatures, plants and property.

This Act came into force from Nov 1986.

IMPORTANT DEFINITIONS:

ENVIRONMENT-SEC.2 (A)

Environment includes water, air and land and the inter-relationship which exists among and between water, air , land, human beings, other living creatures, plants, micro-organism and property.

Section 2(b) Environmental Pollutant:- means any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to environment Environmental Pollution(section 2(c):-means the presence in the environment of any environmental pollutant

Section 2(e) HAZARDOUS SUBSTANCE :- means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment

Section 2(o) Handling has been defined in as manufacture, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance.

Section 2(f) 'Occupier' means a person who has control over the affairs of the factory or premises. It also includes a person in possession of a 'substance' if the charge is in relation to any 'substance'.

POWERS OF THE CENTRAL GOVT. UNDER THE ENVIRONMENT ACT –

The Central Government has been given powers to take all necessary measures for purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution.

1) Coordination of actions by State Government, officers and other authorities

2). Planning and execution of nationwide programme for prevention, control and abatement of environmental pollution

3) Laying standards for quality of environment, emission or discharge of environmental pollution.

4) Restriction of areas in which any industry, process or operations shall be carried out.

5) Laying procedures and safeguards for prevention of accidents which may cause environmental pollution.

6) Examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution.

7) Carrying out and sponsoring investigations and research in environmental pollution.

8) Inspection of any premises, plant, equipment, process, substance, material etc and giving directions to concerned authorities or persons to prevent or control pollution.

9) Establish or recognize environmental laboratories and institutes.

10) Collection and dissemination of information in respect to pollution.

11) Publication of manuals, guides, codes etc. for prevention, control and abatement of environmental pollution.

12) Other matters as may be deemed necessary for the purposes of the Act.

13) To appoint and authorise officers and authorities to perform functions under the Act and authorise them for the purposes of the Act.

POWER TO ISSUE DIRECTIONS –

Central Government can issue directions, in writing, to any person, officer or authority for purposes of Act. Such direction can cover direction for closure, prohibition or regulation of industry or process or stoppage or regulation of supply of electricity, water or any other service. However, no such direction can be given without giving him an opportunity of being heard and to file objections, if any.

POWER OF ENTRY AND INSPECTION –

Central Government can empower any person to enter, at all reasonable times, into any place for (a) performing functions under the Act entrusted to him (b) determining whether directions given or conditions imposed in any notice or order have been complied with. (c) examining and testing any equipment, industrial plant, document, register etc.,

POWER TO SEARCH AND SEIZURE-

Central Government can authorize any person for

(1) conducting search of any building where he has reason to believe that an offence under the Act has been or is about to be committed

(2) Seizure of any such equipment, document, register or other material which may be required as evidence of commission of the offence.

The Provisions of Code of Criminal Procedure, in respect of the search and seizure, are applicable.

POWER TO TAKE SAMPLES AND ANALYSE THE SAME.

Central Government can authorize any person or officer to take samples of air, water, soil or other substance from any factory, premises or other place. Before taking the sample, a notice has to be served on the occupier of the place. Samples should be collected in the presence of the occupier or his agent. Sample should be sealed in a container and should be signed by the person taking the sample as well as the occupier. If he refuses to sign, sample can be taken without his signature and the fact regarding the refusal should be informed to the Government Analyst. Sample should be taken in sufficient quantity and in two parts. Both should be sealed and marked separately. One portion should be handed over to the person concerned and other should be sent for testing. The sample should be sent to Environmental Laboratories established or recognised by Central Government. The Report of analysis should be signed by the Government Analysts. Such report can be used as an evidence in a court.

POWER TO MAKE RULES –

The Central Government can make rules for the purposes like (a) standards of quality of air, water or soil for various areas and purposes (b) maximum allowable concentration of various environmental pollutants for different areas (c) procedures and safeguards for handling of hazardous substances (d) prohibitions and restrictions on handling of hazardous substances in different areas (e) prohibition and restrictions on location of industries and carrying on processes or operations in different areas (f) procedures and safeguards for prevention of accidents which may cause environmental pollution and for providing remedial measures.

RESPONSIBILITIES OF PERSONS UNDER THE ENVIRONMENT ACT:-

Following responsibilities have been fixed on persons connected with environmental pollution.

NOT TO EXCEED STANDARDS OF POLLUTION –

Any person carrying on any industry, operation or process shall not discharge or emit any environmental pollutant in excess of standards prescribed by the Central Government under rules .

SAFEGUARDS IN HANDLING HAZARDOUS SUBSTANCES –

Any person handling hazardous substance will do so only as per prescribed procedure and after following safeguards prescribed by the Central Government

FURNISHING INFORMATION OF ACCIDENT-

Where any discharge of environmental effluent occurs in excess of limits by accident or other unforeseen event, the person in charge of the place where such discharge occurs, must immediately take steps to mitigate the environmental pollution and intimate the fact to authorities concerned. He should render all assistances to the authorities in remedial measures. Expenses of such measures can be recovered from the person concerned

ENVIRONMENTAL LABORATORIES:

Section 12 of the Act empowers the Central Government to establish by notification in the official Gazette, one or more environmental laboratories or recognize one or more laboratories or institutes as environmental laboratories to carry out certain functions under the Act.

Functions of Environmental Laboratories:-

(i) To evolve standardized methods for sampling and analysis of various types of environmental pollutants;

(ii) To analyze samples sent by the Central Government or the Officers empowered under Sub-section (1) of Section 11;

(iii) To carry out such investigations as may be directed by the Central Government to lay down standards for the quality of environment and discharge of environmental pollutants, to monitor and to enforce the standards laid down;

(iv) To send periodical reports regarding its activities to the Central Government;

(v) To carry out such other functions as may be entrusted to it by the Central Government from time to time.

GOVERNMENT ANALYSTS :-

The Central Government has also been empowered to appoint or recognize, by notification in the Official Gazette, such persons having the prescribed qualifications as Government analysts. They will analyze the samples of air, water, soil or other substances sent to the environmental laboratories. A report signed by a Government analyst may be used as evidence of facts in any proceeding under Act.

ENVIRONMENTAL CLEARANCE:-

In May, 1994 The Central Govt. has notified 29 industries as highly polluting in nature. This was known as 'Environment Impact Assessment Development Projects Notification.(EIAN). If these 29 industries are to be established or expanded, a clearance has to be obtained from the Central Government. Certain industries like nuclear power project, petroleum refineries require the permission of Central Govt. only if the investment is more than Rs.50 Crores. But some projects, like drugs, asbestos, mining etc., require the permission of Central Govt., even if the investment is less than Rs.50 Crores.
Even Small Scale Industries are required to get the environmental clearance, if they produce an article for which clearance from Central Govt. is necessary. If the article produced by the SSIs is reserved for it, then they are exempted from environmental clearance.

Clearance will be given by the Central Govt. only on the basis of an Environmental Impact Assessment of the project and the necessary Environmental Management Plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

ENVIRONMENT AUDIT:-

Every person carrying on an industry, operation or process requiring consent Water (Prevention and Control of Pollution) Act 1974 or Air (Prevention and Control of Pollution) Act 1981, is required to submit an environmental audit report in Form V for the financial year ending on 31st March every year on or before the 15th of May, to the concerned State Pollution Control Board. The audit report should be signed by the occupier of the industry himself and not by any outside auditors.

NATIONAL ENVIRONMENT APPELLATE AUTHORITY AND NATIONAL ENVIRONMENT TRIBUNAL:

NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT 1997.

The Central Govt., has passed the above Act in 1997 and it came into force from 30th January 1997. This authority has been constituted to hear appeals with respect to restriction of Areas in which any industry, operation or processes shall be or shall not the carried under the provisions of Environment (Protection) Act, 1986.

Persons aggrieved by orders of central Govt. regarding environmental clearances can make an appeal against that order to this authority. This Authority started functioning from 1st Dec 1997.

The Authority has been entrusted with the same powers as are vested in a civil court under the code of civil procedure 1908 in respect of the following matters:-

a. summoning and enforcing the attendance of any person and examining him on oath;
b. requiring the discovery and production of documents;
c. receiving evidence on affidavits;
d. subject to the provisions of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from an office;
e. issuing summons for the examination of witnesses or documents;

f. reviewing its decisions;
g. dismissing a representation for default or deciding it ex-parte;
h. setting aside any order or dismissal of any representation for default or and order passed by it ex-parte; and
i. any other matter which is required to be, or may be prescribed by the Central Government.

NATIONAL ENVIRONMENT TRIBUNAL ACT 1995.

The Central Govt., has passed the National environment Tribunal Act, 1995 with the following objectives:-

(i)To provide for strict liability for damages arising out of any accident occurring while handling any Hazardous substance and

(ii)To establish National Environment Tribunal for Quick disposal of cases arising from such accidents.

The Bench of the Tribunal will consist of one chairman – Judge of Supreme court / High court and one Technical Member. The Tribunal can have branches also.

The Tribunal will look into violations of environment by industries and authorized to award compensation for death or injury to a person and damage to property and environment. The owner shall be liable to pay compensation for such death, injury or damage.

Section 4 of the Act states that an application for compensation can be made:-

1) by the person who has sustained the injury;
2) by the owner of the property to which the damage has been caused
3) where death has resulted from the accident. by all or any of the legal representatives of the deceased;
4) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased as the case may be;

5) by any representative body or organization, functioning in the field of environment and recognised in this behalf by the Central Government, under all or any of the heads specified in the Schedule; or
6) by the Central Government or a State Government or a local authority under all or any of the heads specified in the Schedule.

COMPENSATION CAN BE CLAIMED FOR THE FOLLOWING :-

a) Death;
b) Permanent, temporary, total or partial disability or other injury or sickness;
c) Loss of wages due to total or partial disability or permanent or temporary disability;
d) Medical expenses incurred for treatment of injuries or sickness;
e) Damage to private property;
f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
g) Expenses incurred by Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
h) Loss to Government or local authority arising out of, or connected with, the activity causing any damage;
i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
j) Claims on account of any harm, damage or destruction to the flora including aquatic flora, crops, vegetables, trees and ,orchards;
k) Claim including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-system;
l) Loss and destruction of any property other than private property;
m) Loss of business or employment or both; .
n) Any other claim arising out of or connected with, any activity of handling of hazardous substance.

Any appeal against the order of the Tribunal can be made to the Supreme Court .

REVIEW QUESTIONS:-

1) What are the objectives of Environment (Protection)Act, 1986?
2) Define the following terms according to Environment (protection) Act, 1986.
   (i)Environment. (ii) Environment pollutant (iii) Environment polluter
   (iv)Hazardous substance (v)Handling (vi)Occupier
3) Discuss the powers of the central Govt., under Environment (protection) Act, 1986.
4) Write notes on:-
   i)Environment Audit Report
   ii)Environment clearance (iii)Government Analyst.
5) What are Environmental laboratories? What are their functions?
6) Discuss the provisions of Environment (protection) Act 1986 regarding prevention, control and abatement of environment pollution.
7) State the procedure for obtaining environmental clearances.
8) Explain the role and functions of National Environment Tribunal
9) Write notes an:- National Environmental Appellate Authority and its powers.

UNIT 6.

CONSUMER PROTECTION ACT, 1986

LEARNING OBJECTIVES:

(i)To understand the important provisions of consumer Protection Act, 1986

(ii)To know the Rights of consumers and

(iii)To know the constitution and functions of various levels of consumer Redressal Forums.

A consumer is a person who consumes a product or utilizes a service. Normally the rule is,' let the Buyer Beware' (Caveat Emptor). A buyer has to take care before buying goods/services.

United Nations adopted guidelines for protection of consumers on 9th April 1985 and it expected that all countries of the World to come with suitable legislative measures. Every year 15th March is celebrated as Consumers' Rights Day.

Consumers' Movement started in America with Ralph Nadar and (Late President) John.F. Kennedy as the pioneers to protect the rights of consumers. In India, exploitation of consumers is very common. Consumers have a very low / weak bargaining power and also cannot assert their right of being heard. Various legislations have been passed in India to protect the consumers. Some of them are:-

i) Contract Act, 1872
ii) Sale of Goods Act, 1930
iii) Standards of weight and measures Act, 1976
iv) Trade Marks Act ,1999.
v) Essential Commodities Act, 1955
vi) Prevention of Black Marketing and maintenance of supplies of Essential commodities Act 1980.

The following are the Basic Rights of Consumers:-

i) Right of Protection from marketing of the products which are hazardous to life and property.

ii) Right to be informed about the quality, quantity, purity standards and price of the goods.
iii) Right to have access to the authority of goods.
iv) Right to be heard and assured that consumers' interests will be respected.
v) Right to stop exploitation of consumers.
vi) Right to consumer education
vii) Right to speedy and simple Redressal of consumers' Disputes

To ensure the above basic rights, the Govt. of India passed the Consumer protection Act, 1986. It came in to force from 24th December 1986.

THE OBJECTIVES OF THIS ACT ARE:-

i) To provide for better protection of interest of consumers
ii) To provide for the establishment of consumer councils and other authorities and
iii) To empower the consumer councils and other authorities to settle consumer disputes and matter connected therewith.

THE SALIENT FEATURES OF THE ACT ARE:-

i) It intends to provide simple, speedy and inexpensive redressal to the consumer grievances.
ii) It applies to all goods / services unless exempted by Central Govt.
iii) It confers certain rights on consumers
iv) It envisages for the establishment of Consumer protection councils at the centre and state levels to promote and protect the rights of consumers.
v) The provisions of this Act are in addition to the provisions of any other Act but not replacing any other Act.

The Act has been amended in 1993 and in 2002.

IMPORTANT DEFINITIONS

COMPLAINANT [SEC. 2(1)(B))

A complainant means any of the following and having made a complaint: (I) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative.

COMPLAINT [SECTION 2(1)(C)]:- means any allegation in writing made by a complainant that

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider

(ii) goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) services hired or availed of or agreed to be hired or availed of by him suffering from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public:

(a) in contravention of any standards relating to safety of such goods as required to be complied with by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;
(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety; with a view to obtaining any relief provided by or under this Act.

(III) DEFECT [SEC. 2(1)(F)]

A 'defect' is defined to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

(IV) GOODS [SEC. 2(1)(H)]

'Goods' under this Act shall have the same meaning as assigned to them under the Sale of Goods Act, 1930.

Accordingly, 'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(V)'SERVICE'

Means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

(VI) CONSUMERS DISPUTE

Means a dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint [Section 2(1) (e)].

(VII)CONSUMER :-

The term consumer means any of the following persons:

(1) A person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment.

The term includes any other user of such goods when such use is made with the approval of the buyer. The expression 'consumer', however, does not include a person who obtains such goods for re-sale or for any commercial purpose.'

(2) A person who hires or avails of any services for consideration of which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The term includes any other beneficiary of such services with the approval of the first-mentioned person. But, a consumer does not include a person who avails of such services for any commercial purpose.

Commercial purpose' does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment:

SOME DECIDED CASES ON THE CONCEPT OF CONSUMER :-

In Western India State Motors Vs. Subag Mal Meena and others, it was decided that a car purchased for the purpose of running it as a taxi, the buyer was not considered as a consumer, because the purpose was considered as commercial purpose.

In Bupendra Jang Bahadur Guna Vs. Regional Manager and others, one person has purchased a tractor mainly to till his land and he let out on hire the tractor, when it was not used by him. It was held by the National Commission. that he was a consumer.

In the case, Pattabiram Vs.Sp.St.Palaniappn, a Chartered Accountant, who is in practice, has purchased a computer for his office, it was decided that he shall not be considered as a consumer.

In another case, it was decided that a X-Ray machine purchased by a private company, comprising of qualified medical practitioners, amounted to purchase for a commercial purpose and the company cannot be considered to be a consumer.

A person registering for a gas connection is a consumer. Subscribers of a telephone are consumers. Subscribers to a Provident Fund scheme are consumers. Commuters traveling in a train, with ticket, are considered to be consumers. Users of electricity services are consumers. A person to whom a flat has been allotted is a consumer.

Persons who are taking treatment in a Govt. Hospital free of charge, cannot be considered as consumers, as they do not pay for the services. The taxes paid by the consumers to the Govt. is not a consideration.

SOME DECIDED CASES ON THE CONCEPT OF SERVICE / DEFICIENCY IN SERVICE:-

Any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any service may be called as Deficiency in service.

In Maina Devi Bairalia Vs L.I.C., one person has taken a life insurance policy and paid the first premium. Before the payment of the second premium, he died. The claim by the wife for the Insurance money was not settled by LIC for 14 years. It was brought to light by newspapers and one M.P. took the issue.

It was held that there was deficiency in service and the claim was paid with interest.

In another case, settlement of a claim for a fire insurance was delayed for more than nine months, it was held that there was deficiency in service.

In another case, telephone bills were sent irregularly and this has led to delayed payment and it resulted in disconnection of telephone. It was argued that there were no rules to send the bills by registered post and it was held that there was no deficiency in service.

In another case, delayed delivery of a video cassette by a courier service , was held as deficiency in service.

In another case, failure of the Housing Board to give possession of a flat, even after paying the price, was held to be a deficiency in service.

In another case, a letter sent through Speed Post, to a distance of 70 KMs, was delivered after 10 days. It was argued by the Postal Department that Indian Post Office Act does not permit compensation for delayed delivery. But it was held that as Speed Post charges extra money, it was liable to pay compensation.

In the case Indian Medical Association Vs. V.P.Shantha, the Supreme Court held that doctors are also liable under the Consumer Protection Act and they were not outside the scope of the Act.. It was further stated that medical practitioners do not enjoy any immunity and they can be sued on the ground that they have failed to exercise proper care and skill.

<u>ESTABLISHMENT OF CONSUMER PROTECTION COUNCILS</u>:-

CENTRAL CONSUMER PROTECTION COUNCIL

Section 4 empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council, known as Central Council, consisting of the Minister in charge of Consumer Affairs in the Central Government, as its Chairman, and such number of other official or non-official members representing such interests as may be prescribed. However, the Consumer Protection Rules, 1987 restrict the number of members of the Central

Council to 150 members Section 5 of the Act requires the Central Council to meet as and when necessary, but at least once in every year. The procedure in regard to transaction of its business at the meeting is given in Rule 4 of the Rules.

STATE CONSUMER PROTECTION COUNCIL

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for that State. The State Council shall consist of a Minister in charge of Consumer Affairs in the State Government as its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government and such number of other official or non official members, not exceeding ten, as may be nominated by the Central Government. The State Council shall meet as and when necessary 'but not less than two meetings be held every year. The procedure to be observed in regard to the transaction business at such meetings shall be prescribed by the State Government.

DISTRICT CONSUMER PROTECTION COUNCIL

In order to promote and protect the rights of the consumers within the district, section 8A provides for establishment in every district , a council to be known as the District Consumer Protection Council. It shall consist of the Collector of the district, who shall be its Chairman and such number of other official and non-official members representing such interests as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairman may think fit. The State Government can prescribe the manner in which the district Forum should carry on its meetings.

REDRESSAL MACHINERY UNDER THE ACT

The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances. District Forum has jurisdiction to entertain complaints where the

value of goods/services complained against and the compensation, if any claimed, is not less than Rs.20 lakhs, the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore; and the National Commission for claims exceeding Rs. 1 crore.

DISTRICT FORUM

Section 9 of the Act provides for the establishment of a District Forum by the State Government in each district of the State. However, the State Government establish more than one District Forum in a district if it deems fit to do so. Each District Forum shall consist of:

(a) a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;

(b) two other members one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member (a) has been convicted and sentenced to imprisonment for an offence, which in the opinion of the State Government involves moral turpitude; or

(b) is an un discharged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualification as may be prescribed by the. State Government.

Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of five years or up to the age of sixty-five years,

whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in section 10 (1) (b) and such re-appointment is also made on the basis of the recommendation of the Selection Committee. A member may resign his office in writing under his hand addressed to the State Government.

JURISDICTION OF DISTRICT FORUM

. Section 11 provides for the jurisdiction of the District Forum under two criteria, namely pecuniary and territorial.

PECUNIARY LIMITS

Section 11 (1) empowers the District Forum to entertain complaints where the value of goods or services and the compensation, if any, claimed is less than rupees twenty lakhs.

TERRITORIAL LIMITS

Section 11 (2) requires a complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint; or anyone of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint, provided that the other opposite party/parties acquiesce in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part.

STATE COMMISSION

Section 16 of the Act empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of :

(a) a person who is or has been a judge of a High Court appointed by the State Government, in consultation with the Chief Justice of the High Court,who shall be its President.
(b) not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman, who shall have the following qualifications, namely:
(i) be not less than thirty-five years of age,
(ii) possess a bachelor's degree from a recognised university, and
(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

It is required that not more than fifty per cent of the members be from among persons having a judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

<u>Disqualifications of a member :-</u>
A person shall be disqualified for appointment as a member if he:-
(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or
(b) is an un discharged insolvent; or
(c) is of unsound mind and stands so declared by a competent court; or
(d) has been removed or dismissed from the service of the Government or body corporate owned or controlled by the Government; or
(e) has in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as member; or
(f) has such other disqualification as may be prescribed by the State Government.

Every appointment shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary Law Department of the State and Secretary- in - charge Consumer Affairs in the State. If the President of the State Commission

is, by reason of absence or otherwise, unable the act as Chairman of the Selection Committee. the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman. Section 16(2) empowers the State Government to decide on the salary or honorarium and other allowances payable to the members c the State Commission and the other terms and conditions of service.

Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall be eligible for reappointment for another term of five years or up to the age of sixty-seven years whichever is earlier, subject to the condition that he fulfills the qua.ifications and other conditions for appointment mentioned in Section 16(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

JURISDICTION OF STATE COMMISSION

SECTION 17 OF THE ACT PROVIDES FOR THE JURISDICTION OF THE COMMISSION AS FOLLOWS:

(a) the State Commission can entertain complaints where the value of the good or services and the compensation, if any claimed exceed Rs.25 lakhs but does not exceed Rs.1crore;
(b) the State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State. Section 15states that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or Rs.25,000, whichever is less;
(c) the State Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, if it appears to it that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity. A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,

a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint. actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Therefore, the State Commission's jurisdiction may be original, appellate or revisional. In respect of (c) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum.

The National Commission in Indian Airlines v. Consumer Education and Research Society held that in respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act . The territorial jurisdiction of the State Commission therefore extends to the territorial limit of the State. In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commission's power to revise orders of the District Forums. Only orders of the District Forum within the State may be subject to revision by the State Commission.

TRANSFER OF CASES

Section 17 A empowers the State Commission on the application of the complainant or of its own motion to transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum-within the State if the interest of justice so requires.

NATIONAL COMMISSION

Section 9 empowers the Central Government to establish the National Consumers' Disputes Redressal Commission, by notification in the Official Gazette. Section 20 provides that the National Commission shall consist of

(a) a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India who shall be its President;

(b) not less than four and not more than such number of members as may be prescribed and one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age;
(ii) possess a bachelor's degree from a recognized university; and
(iii) be a· person of ability, integrity and standing and having adequate knowledge and experience of at least ten years in dealing with problem relating to economics, law, commerce, accountancy, industry, public affairs or administration

Provided that not more than fifty percent of the members shall be from among the persons having judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a pc-iod of ten years as presiding officer at the district level court or any tribunal at equivalent level:

A person shall be disqualified for appointment if he
(a) has been convicted and sentenced to imprisonment for an offence, which, the opinion of the Central Government involves moral turpitude; or
(b) is an undischarged insolvent; or
(c) is of unsound mind and stands so declared by a competent court; or
(d) has been removed or dismissed from the service of the Government or body corporate owned or controlled by the Government; or
(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as

member; or

(f) has such other disqualification as may be prescribed by the Central

GOVERNMENT

Every appointment by the Central Government is required to be made on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India. The Central Government is empowered to fix the salary or honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall hold office for a term of five years or up to seventy years of age, whichever is earlier and shall be eligible for reappointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 20(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

JURISDICTION OF NATIONAL COMMISSION

Section 21 provides that the National Commission shall have jurisdiction:

(a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore;

(b) to entertain appeals against the orders of any State Commission. No appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or Rs.35,000, whichever is less; and

(c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction illegally or has acted in the exercise of its jurisdiction illegally or with material irregularity.

NATURE AND SCOPE OF REMEDIES AVAILABLE TO CONSUMERS:-

THE FOLLOWING PERSONS CAN FILE A COMPLAINT UNDER THIS ACT.

(i)Any consumer (ii)Any recognized consumers' association (iii)One or more consumers , having a common interest (iv)the Central Govt. or the State Govt.

The complaint may relate to (i)Unfair or restrictive trade practice (ii)deficiency in service (iii)Defective goods supplied (iv)Charging of higher prices than prescribed (v)Hazardous goods offered in contravention of any law in force.

The complaint can be filed with the District / State / National Commission, depending upon the value of goods and services and compensation. If the amount involved is less than Rs.20 lakhs, it has to be submitted to the District Forum / if it is in between Rs.20 lakhs to Rs.1 Crore, then to the State Commission and if it exceed Rs.1 Crore , it has to be referred to the National Commission. Orders of the National Commission can be challenged in the Supreme Court. Normally, only one appeal, is permitted.

No fee is payable along with the complaint by the complainant. The complaint can be sent by Post with the details of complaint and the relief requested.

The commission / Forum will send a copy of the complaint to the other party. He should reply within 30days. The time may be extended by another 15 days, if it is necessary. If testing of goods is necessary, the sample is sealed and sent to the Laboratory and the report has to be given by the Laboratory within 45 days to the Forum / Commission. Lab fees are to be deposited by the complainant. An opportunity will be given to raise objections to the lab reports to the opposite party.

In the case of services, the evidences will be produced and the opposite party will be given an opportunity of being heard.

THE FOLLOWING RELIEFS ARE AVAILABLE TO THE CONSUMERS.

(i)Removal of defects pointed by the Lab from the goods (ii)Replacement of goods with the new goods (iii)Repayment of prices and charges (iv)compensation (v)Removal of deficiency in service (vi)Discontinuance of unfair trade practice (vii)Not to offer hazardous goods (viii)withdrawal of such hazardous goods (ix) providing cost to the parties.

The time fixed for settling the disputes is 3 months and in cases,where the lab report is needed, it may be extended to 5 months.

Any appeal to the State Commission should be made within 30 days and similarly appeals to National Commission to be made within 30 days and appeals to Supreme Court to be made within 30 days. The Supreme Court has held that the consumer forums have no power to grant any interim orders / stay/ temporary injunctions.

REVIEW QUESTIONS :-

1) 1.What are the objectives of Consumer Protection ACT,1986?

2) What are the rights of consumers ?

3) Define the following terms as per CP Act.:-
(i)Complaint (ii)Complainant (iii)Service (iv)goods
(v)Defect (vi)consumer

4) Define the term consumer, citing legal decisions.

5) Explain the term deficiency in service , citing legal cases.

6) Write notes on Consumers protection councils at Central, State and District levels.

7) Discuss the constitution of redressal machinery available to consumers under the Consumer Protection Act, 1986.

8) Describe the procedure for making complaints to various authorities under Consumer Protection Act, 1986.

9) What are the various relief measures available to the complainants under C.P.Act,1986?

ALAGAPPA UNIVERSITY, KARAIKKUDI – 630 003

M.B.A.,(CORPORATE SECRETARYSHIP)
PAPER 4.2. ECONOMIC LEGISLATION
MODEL QUESTON PAPER

SECTION – A (5 X 8 = 40 MARKS)
ANSWER ANY FIVE QUESTIONS
ALL QUESTIONS CARRY EQUAL MARKS

1. What are the objectives of Industries (Dev.& Reg.)Act,1951 ?
2. What is an industrial license ?When it is necessary for industrial undertakings?
3. Write notes on :- (a) Competition advocacy
   (b)Constitution of Competition Commission of India
4. Define the following terms as per FEMA,1999:-
   (i)Foreign Exchange (ii)Foreign security (iii)Authorized person
   (iv)Capital account transaction
5. What are the duties of an exporter of goods and services on realization and repatriation of foreign exchange ?
6. Write notes on (i) Sustainable Development (ii)Powers of the State Pollution Control Board under Water (P & C of Pollution) Act,1974.
7. What are the powers of Central Govt. under the Environment (Protection) Act,1986 ?
8. Define the term 'Consumer ' under the Consumer Protection Act,1986. What are the rights of the consumers ?

SECTION-B (4 X 15 = 60 MARKS)
ANSWER ANY FOUR QUESTIONS.
ALL QUESTIONS CARRY EQUAL MARKS

9. Discuss the powers of the central Govt. under Industries (Dev.& Reg)Act,1951 regarding investigation and take-over .
10. Explain the powers and functions of Competition Commission of India.
11. What are the current account transactions (i)which are prohibited (ii)for which there are no restrictions and (iii)for which RBI's prior approval is necessary ?

12. Discuss the powers and functions of the State Board to prevent and control Air and water pollution in the country.
13.Explain the objectives and salient features of Environment (Protection) Act,1986.
14.Discuss the constitution of redressal machinery and the relief measures available to consumers under the Consumer Protection Act,1986.
15.Write notes on :- (i) Industrial policy Resolutions
(ii)Special Director (Appeals)under FEMA,1999
(iii) Environmental Clearance
(iv)Deficiency in Service under Consumer Protection Act,1986.

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Educate ⇗ Empower ⇗ Elevate

Alagappa University formed in 1985 has emerged from the galaxy of institutions initially founded by the munificent and multifaceted personality, Dr. RM . Alagappa Chettiar in his home town at Karaikudi. Groomed to prominence as yet another academic constellation in Tamil Nadu, it is located in a sprawling and ideally suited expanse of about 420 acres in Karaikudi.

Alagappa University was established in 1985 under an Act of the State Legislature. The University is recognised under Sec. 2(f) and Sec.12(B) of the University Grants Commission. It is a member of the Association of Commonwealth Universities and the Association of Indian Universities. The University is accredited with 'A' Grade by NAAC.

The Directorate of Distance Education offers various innovative, job-oriented and socially relevant academic programmes in the field of Arts, Science, IT, Education and Management at the graduate and post-graduate levels. It has an excellent network of Study Centres throughout the country for providing effective service to the student community.

The distance education programmes are also offered in South-East Asian countries such as Singapore and Malaysia; in Middle-East countries, viz., Bahrain, Qatar, Dubai; and also at Nepal and Sri Lanka. The programmes are well received in India and abroad.



ALAGAPPA UNIVERSITY

(Accredited with 'A' Grade by NAAC)

Karaikudi 630 003

DIRECTORATE OF DISTANCE EDUCATION

(Recognized by Distance Education Council (DEC), New Delhi)